THE

MADRAS LAW JOURNAL

II] . JULY [1959

NOTES OF RECENT CASES.

[SUPREME COURT.]

S. K. Das, A. K. Sarkar and K. Subba Rao, JJ. Ujagar Singh *v.* Mst. Jeo.
23rd April, 1959. C.A. No. 296 of 1956.

Custom—Punjab—Whether sisters are excluded by collaterals in the matter of inheritance to non-ancestral property.

" It seems to us wrong to say that a general custom need never be proved. It therefore appears to us that the ordinary rule is that all customs, general or otherwise, have to be proved. Under section 57 of the Evidence Act, however, nothing need be proved of which Courts can take judicial notice.

The High Court was right in the view that it could not be held on the authority of paragraph 24 in Rattigan's Digest that a general custom excluding sisters from inheritance as against collaterals, existed".

L.R. 45 I.A. 10 : 34 M.L.J. 48, referred to.

Achhru Ram, for Appellant.

Gurbachan Singh, for Respondent.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

S. K. Das, A. K. Sarkar and K. Subba Rao, JJ. Bhinka *v.* Charan Singh.
C.A. Nos. 78-83 of 1959.
24th April, 1959.

Criminal Procedure Code (V of 1898), section 145 and the jurisdiction of Civil Courts.

Under section 145 (6) of the Criminal Procedure Code, a Magistrate is authorised to issue an order declaring a party to be entitled to possession of a land until evicted therefrom in due course of law. The Magistrate does not purport to decide a party's title or right to possession of the land but expressly reserves that question to be decided in due course of law. The foundation of his jurisdiction is an apprehension of the breach of the peace and to prevent it, he makes a temporary order irrespective of the rights of the parties, which will have to be agitated and disposed of in the manner provided by law. The life of the said order is coterminous with the passing of a decree by a Civil Court and the moment a Civil Court makes an order of eviction, it displaces the order of the Criminal C urt.

L.R. 29 I.A. 24 : 12 M.L.J. 83, referred to.

B. C. Misra, for Appellant.

S. N. Andley, for Respondent.

G.R.

[SUPREME COURT.]

B. P. Sinha, J. L. Kapur and M. Hidayatullah, JJ. Saroj Kumar Mazumdar *v.* C.I.T.
C.A. No. 347 of 1955.
4th May, 1959.

Income-tax Act (XI of 1922)—Isolated transaction—When adventure in the nature of trade.

The question for determination in this appeal is whether the solitary transaction in respect of about three-quarters of an acre of land in the suburbs of Calcutta was an adventure in the nature of trade and therefore liable to income-tax.

The line of demarcation between cases of isolated transactions of purchase and sale between ventures in the nature of trade and those which are not such ventures, if any, is very thin.

In all the circumstances of this case, the total impression created on our mind, is that it has not been made out by the Department that the dominant intention of the appellant was to embark on a venture in the nature of trade, when he entered into the agreement which resulted in the profits sought to be taxed.

A. V. Viswanatha Shastri, for Appellant.

C. K. Daphtary, Solicitor-General of India, for Respondent.

G.R. *Appeal allowed.*

[SUPREME COURT.]

S. R. Das, C.J., N. H. Bhagwati, S. K. Das, P. B. Gajendragadkar and K. N. Wanchoo, JJ. Indian Hume Pipe Co., Ltd. *v.* Workmen.

5th May, 1959. C.A. No. 54 of 1956.

Industrial Disputes Act (XIV of 1947)*—Determination of bonus—Full Bench Formula —Debenture—Redemption Fund—Cannot be deducted as prior charge.*

" It is also well settled that the calculations of the surplus available for distribution should be made having regard to the working of the industrial concern in the relevant accounting year without taking into consideration the credits or debits which are referable to the working of the previous years, *e.g.*, the refund of excess profits tax paid in the past or loss of previous years carried forward but written off in the accounting year also any provision that may have to be made to future liabilities, *e.g.*, redemption of debentures stock or provision for provident fund, gratuity and other benefits, etc., which, necessary though they may be, cannot be included in the category of prior charges."

M. C. Setalvad, Attorney-General of India, for Appellant.

N. V. Pharke, for Respondent.

G.R.

[SUPREME COURT.]

S. R. Das, C.J., N. H. Bhagwati, S. K. Das, P. B. Gajendragadkar and K. N. Wanchoo, JJ. Tata Oil Mills Co., Ltd. *v.* Workmen.

5th May, 1959. C.A. No. 321 of 1958.

Industrial Disputes Act (XIV of 1947)*—Determination of bonus—Full Bench Formula —Extraneous income—Deduction of.*

We cannot see how income arising during the year in the normal course of business of the concern can be called extraneous income merely on the ground that no direct connection between the efforts of labour and the accrual of the income has been established. Then we come to the profit of Rs. 3 lakhs made by a change in the method of accounting. The tribunal did not accept this income as extraneous and in so doing it fell into error. This income of Rs. 3 lakhs has nothing whatsoever to do with the efforts of labour, even though it has arisen this year. It has arisen out of a fortuitous circumstance inasmuch as this year there was a change in the basis of valuation of stock. It is not income in the normal course of business because it is not likely to arise over again. In the circumstances this income of Rs. 3 lakhs must be treated as extraneous income and excluded for the purpose of calculations based on the Full Bench Formula.

C. K. Daphtary, Solicitor-General of India, for Appellants.

Rajni Patel, for Respondent.

G.R.

[SUPREME COURT.]

S. R. Das, C.J., N. H. Bhagwati, S. K. Das, P. B. Gajendragadkar and K. N. Wanchoo, JJ. Crompton Parkinson Works Private Ltd. *v.* Its Workmen.

5th May, 1959. C.As. Nos. 755 and 757 of 1957.

Industrial Disputes Act (XIV of 1947)*—Bonus—Determination—Full Bench Formula —Deduction for commercial necessity—Error of Law.*

" The conclusion of the Tribunal of that point is founded that the test of "commercial necessity" applied by the Income-tax authorities for determining whether

the expenditure was allowable under section 10 (2) (*xv*) of the Indian Income-tax Act should be applied by the Tribunal. The Tribunal evidently overlooked the fact that the Income-tax authorities are entitled to apply the tests of commercial necessity by reason of the express provisions of section 10 (2) (*xv*) which authorise them to tax at the taxable income, profits and gain after making allowance for expenditure laid out and expended wholly and exclusively for the purpose of the business. There is no such provision in the Industrial Disputes Act. In the absence of cogent and compelling evidence leading to the definite conclusion and finding that a purported expenditure was shown or had been made with the express object of minimising the profits with a view to deprive the workmen of their bonus, it is no part of the duty of an Industrial Tribunal to substitute its own judgment as to what was or was not commercially justified in the place of the judgment exercised by the Company and its directors to whom in law the management of the Company is confided."

"A conclusion drawn by the Tribunal without adverting to the evidence before it amounts to an error of law and cannot possibly be sustained."

C. K. Daphtary, Solicitor-General of India, for Appellant.

Rajni Patel, for Respondent.

G.R.

[SUPREME COURT.]

S. R. Das, C.J., N. H. Bhagwati and M. Hidayatullah, JJ.
5th May, 1959.

Trustees of the Charity Fund, Bombay *v.* C.I.T.
C.A. No. 396 of 1957.

Income-tax Act (XI of 1922), *section* 4 (3) (1)—*Religious or charitable purposes.*

The provision for giving preference to the poor and indigent relations or the members of the family of Sir Sassoon David, *Bart.*, cannot affect the public charitable trust constituted under sub-clause (1). In our opinion the income from the trust properties come within the scope of section 4(3) (1) and is, therefore entitled to exemption.

R. J. Kolah, for Appellant.

K. N. Rajagopala Shastri, for Respondent.

G.R. *Appeal allowed.*

[SUPREME COURT.]

B. P. Sinha, J. L. Kapur and M. Hidayatullah, JJ.
5th May, 1959.

Indian Molasses Co. (P.) Ltd. *v.* C.I.T.
C.A. No. 395 of 1957.

Income-tax Act (XI of 1922), *section* 10 (2) (*xv*)—*Scope.*

To be an allowance within clause (xv) of section 10 (2) of the Income-tax Act the money paid out or away must be (*a*) paid out wholly and exclusively for the purpose of the business and further (*b*) must not be (i) capital expenditure, (ii) personal expense or (iii) an allowance of the character described in clauses (i) to (xiv). But whatever the character of the expenditure, it must be a paying out or away, and we are not concerned with the other qualifying aspects of such expenditure stated in the clause either affirmatively or negatively.

S. S. Aiyangar, for Appellant.

M. C. Setalvad, Attorney-General of India, for Respondent.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

B. P. Sinha, P. B. Gajendragadkar and K. N. Wanchoo, JJ.
6th May, 1959.

Ispahani, Ltd., Calcutta *v.* Workmen.
C.A. Nos. 473 and 474 of 1957.

Industrial Disputes Act (XIV of 1947)—*Puja bonus—Implied agreement.*

Puja is a special festival in Bengal and it has become usual with many firms there to give bonus before puja to their workmen. It may be taken as well settled that puja bonus in Bengal stands on a different footing from the profit bonus based on the Full Bench Formula. Where the agreement was not express, circumstances might lead the tribunal to an inference of implied agreement. We are of opinion

that the tests laid down in that case for inferring that there was an implied agreement for grant of such a bonus are correct and it is necessary that they should all be satisfied before bonus of this type can be granted.

M. C. Setalvad, Solicitor-General of India, for Appellants in C.A. No. 473 and Respondent in C.A. No. 474.

P. K. Ghosh, for the Respondent in C.A. No. 473 and Appellant in C.A. No. 474.

G.R.

[SUPREME COURT.]

B. P. Sinha, P. B. Gajendragadkar and K. N. Wanchoo, JJ. *7th May*, 1959.

Graham Trading, Co., *v.* Workmen. C.A. No. 161 of 1958.

Industrial Disputes Act (XIV of 1947)—Puja bonus—Implied agreement.

Puja bonus which is usually paid in Bengal is of two kinds; namely, (1) where it is paid as an implied term of employment and (2) where it is paid as a customary and traditional payment. An implied term of employment cannot be inferred in this case, for right from 1948 to 1952 the Company whenever it paid this bonus made it clear that it was an *ex gratia* payment and would not constitute any precedent for future years.

B. Sen, for Appellant.

D. N. Mukerji, for Respondent.

[SUPREME COURT.]

B. P. Sinha, P. B. Gajendragadkar and K. N. Wanchoo, JJ. *7th May*, 1959.

Raj Engineering Works *v.* Workmen. C.A. No. 323 of 1958.

Industrial Disputes Act (XIV of 1947)—Balance sheets as the basis of workmen's claims for bonus—Festival holidays.

Ordinarily the figure of gross profits disclosed by the balance-sheet should be taken as the basis for the working of the Full Bench Formula, for determining bonus unless of course any entries in the balance-sheet are of such a glaringly suspicious character that the tribunal feels justified in examining them.

The contention of the appellant that the " question about the number of such holidays is a question of fact and since the tribunal had decided the question it was not open to the Labour Appellate Tribunal to interfere with the said decision" was rejected because the Court held that " It is significant that for the mistake which is thus apparent on the face of the award passed by the tribunal the appellant itself is to blame. The pleadings of the parties before the tribunal explain how the tribunal committed the mistake."

Veda Vyasa, Senior Advocate (*S. K. Kapur* and *Ganpat Rai*, Advocates with him), for Appellants.

Y. Kumar, Advocate, for Respondent.

G.R. *Appeal partly allowed.*

[SUPREME COURT.]

S. R. Das, C.J., N. H. Bhagwati and M. Hidayatullah, JJ. *8th May*, 1959.

C.I.T. *v.* Ranchoddas Karsondas. C.A. No. 281 of 1955.

Income-tax Act (XI of 1922), sections 22 (1) and (2) and 34—Scope.

While the Bombay High Court seems to be of the view that a " voluntary " return showing a non-taxable income is still a good return for all purposes under the Act, the Calcutta High Court is of the view that what section 22 (1) of the Act requires is a return of taxable income and not a return of income, which, shows a loss or is below the taxable limit. It is a little difficult to understand how the existence of a return can be ignored, once it has been filed. Notice under section 34 is only necessary if at the end of the assessment year no return has been made by the assessee, but where the assessee himself chooses voluntarily to make a

return, no question can arise under section 34 of assessment escaping, and therefore there is no necessity to serve any notice under section 34. Bombay view approved.

K. N. Rajagopala Shastri, for Appellant.
R. J. Kolah, for Respondent.
G.R.

[SUPREME COURT.]

S. R. Das, C.J., S. J. Imam, S. K. Das, K. N. Wanchoo and M. Hidayatullah, JJ. — State Bank of India *v.* Employees.
12th May, 1959. — C.As. Nos. 56-62 of 1957.

Banking Companies Act (X of 1949), *section* 10—*Sastri's Award—Bonus to employees —Amendment in* 1956.

" There are, in our view, clear indications in the section itself that the word 'remuneration' has been used in the widest sense, and undoubtedly includes 'bonus'. It is labour's share in the profits, and as it is a remuneration which takes the form of a share in profits, it comes within the mischief of section 10 of the Banking Companies Act."

The Sastri's Tribunal appointed by the Government was competent to go into the question of bonus and section 10 of the Banking Companies Act prior to its Amendment in 1956 prohibited the grant of industrial bonus to bank employees.

N. A Palkhiwala and *M. C. Setalvad,* Attorney-General or India, for Appellants.
N. V. Pharke and *B. P. Maheswari,* for Respondents.
N. C. Chatterjee, for Bank Employees.
G.R. ——— *Appeals allowed.*

[SUPREME COURT.]

B. P. Sinha, P. B. Gajendragadkar and K. N. Wanchoo, JJ. — Imperial Hotel *v.* Chief Commissioner, Delhi.
13th May, 1959. — C.A. No. 291 of 1956.

Industrial Disputes Act (XIV of 1947)—*Union of Hotel-workers—Right to be a party before the Tribunal.*

"I am of the opinion that it was entirely unnecessary to mention in the order of reference who were the workmen who were responsible for the dispute ". The dispute was between the management and the employees. The Union had been added "merely for the sake of convenience" of the Tribunal in deciding the issue.

J. G. Sethi, for Appellant.
R. H. Dhebar, for Respondent No. 1.
G. S. Pathak, for Respondent No. 3.
G.R. ——— *Appeal dismissed.*

[SUPREME COURT.]

S. J. Imam and J. L. Kapur, JJ. — Abdul Rahim Ismail Rahimtoola *v.* State of Bombay.
14th May, 1959. — Crl.A. No. 182 of 1957.

Passport Act (XXXIV of 1930), *section* 3 *and rules—Applicability.*

On a reasonable interpretation of section 3 of the Act and rules 3 and 4 of the rules there can be no manner of doubt that these provisions apply to all persons including Indian citizens.

O. N. Srivastava, for Appellant.
G. C. Mathur, for Respondent.
G.R. ——— *Appeal dismissed.*

[SUPREME COURT.]

B. P. Sinha, P. B. Gajendragadkar and K. N. Wanchoo, JJ. — Guest, Keen Williams, Ltd *v.* F. J. Sterling.
15th May, 1959. — C.A. No. 403 of 1957.

Industrial Disputes Act (XIV of 1947)—*Age of superannuation—Relevant factors.*

" In fixing the age of superannuation industrial Tribunals have to take into account several relevant factors. What is the nature of the work assigned to the

employees in the nature of their employment? What is the nature of the wage structure paid to them? What is the character of the climate where the employees work and what is the age of superannuation fixed in comparable industries in the same region? What is generally the practice prevailing in the industry in the past in the matter of retiring its employees? These and other relevant facts have to be weighed by the Tribunal in every case when it is called upon to fix an age of superannuation in an industrial dispute."

M. C. Setalvad, Attorney-General of India, for Appellants.

C. K. Daphtary, Solicitor-General, of India, for Respondent.

G.R.

[SUPREME COURT.]

S. R. Das, C.J., N. H. Bhagwati and M. Hidayatullah, JJ.
15th May, 1959.

C. I.T. *v.* Kalu Babu Lalchand.
C.A. No. 431 of 1957.

Income-tax Act (XI of 1922)—Joint family—Income and individual income of a member—Test.

The finding in this case is that the promotion of the Company and the taking over of the concern and the financing of it were all done with the help of the joint family funds and the said B. K. Rohatgi did not contribute anything out of his personal funds if any. In the circumstances we are clearly of opinion that the managing director's remuneration received by B. K. Rohatgi was as between him and the Hindu undivided family, the income of the latter and should be assessed in his hands.

C. K. Daphtary, Solicitor-General of India., for Appellant.

N. C. Chatterjee, for Respondent.

G.R. *Appeal allowed.*

[SUPREME COURT.]

B. P. Sinha, S. J. Imam, J. L. Kapur, P. B. Gajendragadkar and K. N. Wanchoo, JJ.
19th May, 1959.

Dharangadhra Chemical Works *v.* Dharangadhra Municipality.
C.A. No. 173 of 1959.
(Petition No. 174 of 1958.)

Nuisance—Necessity for expeditious disposal of the case.

The special officer appointed by the Bombay Government to inquire into the matter had wrongly decided that it was for the Municipality to be satisfied about the existence of nuisance and that he could not go into the question. As the matter had been pending since June, 1956, the inquiry should be completed without undue delay. Proceedings of this kind ought to be handled with utmost expedition.

Purshotamdas Trikumdas, for Appellants.

N. C. Chatterjee, for Respondent.

G.R. *Appeal allowed.*

[SUPREME COURT.]

B. P. Sinha, S.J. Imam, J. L. Kapur, P. B. Gajendragadkar and K. N. Wanchoo, JJ.
20th May, 1959.

V. V. Giri *v.* Suri Dora.
C.A. No. 539 of 1958.

Representation of People Act (XLIII of 1951), section 54—Scheduled tribes and the general seat.

(By *Majority*)—From the various provisions of the Representation of the People Act and the Constitution it was clear that an election to the Lok Sabha from a double-member constituency where one seat was reserved for the Scheduled Tribes was " one ". Though the Constitution showed just anxiety to afford necessary protection to the Scheduled Tribes it deliberately refused to adopt the system of separate electorates. A member of the Scheduled Castes and Tribes was entitled to contest a Reserved seat. But it did not follow that because he claimed the benefit of the Reserved seat and conformed to the statutory requirement in

that behalf he was precluded from contesting the election, if necessary, for the general seat.

Once it was realized that the election was from the constituency as a whole and not by reference to two separate and distinct seats, there would be no difficulty in accepting the view taken by the returning officer in declaring Mr. Dora elected to the general seat. There was no substance in the contention that section 54 was *ultra vires* the Constitution and guaranteed reservation of a minimum number of seats to the Scheduled Castes and Tribes. If they secured additional seats by election to general unreserved seats there would be no repugnancy at all.

N. C. Chatterjee, for Appellant.

Rama Reddy and *Mahalingair*, for Respondent No. 1.

S. S. Shukla, for Respondent No. 2.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

B. P. Sinha, S. J. Imam, J. L. Kapur,
P. B. Gajendragadkar and K. N. Wanchoo, JJ
20th May, 1959.

Ram Prasad Das *v.*
State of West Bengal.
Cr. A. No. 59 of 1959 and
Petition No. 51 of 1959.

Preventive Detention Act (IV of 1950)—*Vague grounds or irrelevant grounds.*

This Court, and naturally, the High Courts, have treated the recitals in the orders of detention, with particular reference to the several clauses and sub-clauses of section 3 (1) (*a*) and (*b*) of the Act, as stating the object to be achieved in making the order of detention. The order of detention may also contain recitals of fact upon which it is based. If the order of detention also contains the recitals of facts upon which it is founded, no further question arises, but if it does not contain the recitals of facts which form the basis of the conclusions of fact, justifying the order of detention, then, as soon as may be (now, under section 7 within a maximum period of five days from the date of detention), the person detained has to be informed of those facts which are the basic facts or the reasons on which the order of detention has been made. Section 3 of the Act requires the authority making an order of detention, to state the fact of its satisfaction that it is necessary to make the order of detention of a particular person, with a view to preventing him from acting in a manner prejudicial to one or more of the objects contained in clauses and sub-clauses of section 3 (1) (*a*) and (*b*) of the Act. Section 7 requires that the person detained should be communicated the grounds on which the order of detention has been made, so as to afford him the earliest opportunity to make a representation against the order, to the appropriate Government. The statement of acts contemplated by section 7, would, thus, constitute the grounds, and not the matters contained in one or more of the clauses and sub-clauses under section 3 (1) (*a*) and (*b*) of the Act. Section 3 also requires that when an order of detention has been made, the State Government concerned has to be appraised of the order of detention as also of the grounds on which the order of detention has been made together with such other particulars as have a bearing on the order and the grounds.

Veda Vyasa, Senior Advocate (*S. K. Kapur* and *Ganpat Rai* with him), for Appellant.

B. Sen, Senior Advocate (*P. K. Bose*, Advocate with him), for Respondent.

G.R. *Appeal and Petition dismissed.*

[SUPREME COURT.]

B. P. Sinha, P. B. Gajendragadkar and K. N. Wanchoo, JJ.
21st May, 1959.

C.S.D. Swamy *v.* The State.
Cr.A. No. 177 of 1957.

Prevention of Corruption Act (II of 1947)—Presumption as to known sources of income of the accused—Burden of proof.

Under the Prevention of Corruption Act the Legislature has deliberately cast a burden on the accused not only to offer a plausible explanation as to how he came by his large wealth, but also to satisfy the Court that this explanation was worthy of acceptance.

(In the present case it could not be said that the accused was not in possession of pecuniary resources disproportionate to his known sources of income.)

G. S. Pathak, for Appellant.

C. K. Daphtary, Solictor-General of India, for Respondent.

G.R. *Appeal dismissed*

[SUPREME COURT.]

B. P. Sinha, P. B. Gajendragadkar and K. N. Wanchoo, JJ.
21st May, 1959.

Imperial Hotel, Maidens Hotel and Swiss Hotel *v.* Their Workmen.
C.A. Nos. 31-33 of 1958.

Industrial Disputes Act (XIV of 1947) section 33—Ordinary law of master and servant—Right to suspend.

" We are of opinion that the ordinary law of master and servant as to suspension should be held to have been modified in view of the fundamental change introduced by section 33 in the law and a term should be implied by industrial tribunals in the contract of employment that if the master has held a proper inquiry and come to the conclusion that the servant should be dismissed he has the power to order his suspension and there is no obligation on him to pay."

M. C. Setalvad, Attorney-General of India, for Appellant.

G. S. Pathak, for Respondents.

G.R. *Appeals partly allowed.*

[SUPREME COURT.]

S. J. Imam, A. K. Sarkar and K. Subba Rao, JJ.
21st May, 1959.

Union of India *v.* Kishorilal Gupta.
C.A. No. 250 of 1955.

Arbitration clause in a contract—Whether a collateral term—If operative after contract has come to an end by performance.

(By *Majority*)—As the contract subsists for certain purposes the arbitration clause operates in respect of these purposes. In these cases it is the performance of the contract that has come to an end, but the contract is still in existence for certain purposes in respect of disputes arising under it or in connection with it. An arbitration clause is a collateral term of a contract as distinguished from its substantive terms ; but nonetheless it is an integral part of it.

H. N. Sanyal, Additional Solicitor-General of India, for Appellant.

C. B. Aggarwala, for Respondent.

G.R. *Appeal dismissed.*

Rajamannar, C.J. and Ganapathia Pillai, J. Thyagarajan *v.* Official Liquidator.
20th March, 1959. O.S.A. No. 82 of 1958.

Companies Act (I of 1956), *sections* 125 *and* 127—*Scope and effect of—Unregistered charge created and acquired by a company—Validity—Difference between.*

Section 125 of the Companies Act renders unregistered charges created by a company void against the Liquidator and the creditors of the company, though such an unregistered charge is not void for all purposes and would be binding on the company itself so long as it is a going concern. Section 127 of the Act deals with cases where a company acquires property subject to an unregistered charge and there is no provision in it rendering the charge not binding on the Liquidators or the creditors of the purchasing company. The word 'created' in section 125 (1) of the Act cannot in the context be given an extended meaning to include 'accepted' which is dealt with under section 127 of the Act.

T. R. Arunachalam, for Appellant.

The Official Liquidator, Madras, *V. V. Raghavan, K. R. Vepa* and *C. Vasudevan,* for Respondents 1 to 4.

R.M. ——— *Appeal dismissed.*

Ramachandra Ayyar, J. Syed Moosa Kazimi *v.* Sheriff.
23rd March, 1959. W.P. No. 30 of 1957.

Payment of Wages Act (IV of 1936), *section* 2 (1)—*'Factory'—Meaning of.*

Factories Act (LXIII of 1948), *section* 2 *(m)—'Factory'—If incorporated in Payment of Wages Act.*

Interpretation of Statutes—One Statute incorporating the provisions of another earlier one—Earlier enactment repealed and re-enacted—Effect of on the incorporating Statute.

The use of an electric motor in a bakery for purposes of lifting water would constitute a 'manufacturing process' so as to bring the place within the definition of the term 'factory' as defined in the Factories Act, 1948 and also under section 2 (1) of the Payment of Wages Act, 1936.

When the provisions of one Statute are by reference incorporated in another and the earlier Statute is afterwards repealed and re-enacted, in the absence of a contrary intention in any of the Statutes, the re-enacted provisions would be deemed to have been incorporated in the incorporating enactment. Section 2 (1) of the Payment of Wages Act, which incorporates the definition of 'factory' as defind in the Factories Act, 1934, would be deemed to incorporate the definition as defined in the Factories Act, 1948. The amendment of section 2 (1) of the Payment of Wages Act in 1957 is only by way of abundant caution and even before the amendment the definition of factory as in the Factories Act, 1948, would apply to section 2 (1) of the Payment of Wages Act.

T. Venkatadri and *S. Jayakumar,* for Petitioner.

The Additional Government Pleader (*K. Veeraswami*) and *B. Lakshminarayana Reddi,* for Respondents.

R.M. ——— *Petition dismissed.*

Ramaswami, J. Amirthalingam *v.*
24th March, 1959. Dr. Lakshmanaswami Mudaliar.
C.R.P. No. 423 of 1959.

Specific Relief Act (I of 1877), *section* 9—*Orders under—When could be challenged in revision.*

It is now well-settled that an order made under section 9 of the Specific Relief Act is not appealable. Nor could a review or revision lie against such an order as the aggrieved party has a right to institute a suit on the basis of a title. Though there

is no specific bar in the section itself prohibiting a revision to the High Court, still the revisional jurisdiction of the High Court would generally be declined in such cases. In exceptional cases where the rights of the aggrieved party are so clear that it may not be desirable to force him to institute another suit or in cases of manifest error or defect of jurisdiction the High Court may interfere in revision.

T. S. Swaminatha Ayyar for Petitioner.

Respondent not represented.

R.M. ——— *Petition dismissed.*

Ramachandra Iyer, J.
27th March, 1959.

Natesa Gramani *v.*
Collector of Chingleput.
W.P. No. 456 of 1958.

Madras Cinemas Regulation Act (IX of 1955), *section* 7 *and Rules under—Rules* 80 (2) *and* 91 (1)—*Suspension of licence for breach of conditions enacted in rules—Validity—Clause* 16 *of the conditions of licence—Scope of.*

A licence under the Madras Cinemas Regulation Act, 1955, is issued subject generally to the provisions of the Act and the rules made thereunder and also subject to the other conditions that are printed on the licence itself. It should therefore be deemed that the Act and the rules were incorporated amongst the conditions of the licence. Hence, clause 16 of the conditions of the licence granted under the Act would enable the authority to cancel a licence for the breach of not merely the conditions actually embodied in the licence but also of the rules framed under the Act, which are made part of the licence.

I.L.R. (1956) Mad. 728, referred.

T. K. Subramania Pillai, for Petitioner.

The Additional Government Pleader (*K. Veeraswami*), for Respondent.

R.M. ——— *Petition dismissed.*

Somasundaram and Ramaswami, JJ.
2nd April, 1959.

Dorayan *v.*
Muthuswami Goundan.
C.A. Nos. 571 and 572 of 1958.

Penal Code (XLV of 1860), *sections* 302 *and* 326—*Death resulting from the act of the accused—When will amount to hurt, culpable homicide or murder—Relevancy of motive—Principles.*

In case where death results from the act of an accused and there is no evidence as to intention, other than what is to be inferred from the act of the accused himself, the offence committed by the accused may be one of three, *viz.*, hurt, culpable homicide not amounting to murder or murder. Whether in a particular case the offence will fall under one or the other will depend on the circumstances of each case. The guiding factor in all such cases is the intention or knowledge with which the act is committed and the nature of such knowledge or intention will determine the character of the offence.

(Factors for guidance of Courts indicated—Relevancy of motive, discrepancies in evidence and value of first information report discussed).

V. L. Ethiraj and *M. Narayanamurthi,* for Appellants in C.A. No. 571 of 1958.

A. S. Sivakaminathan and *M. Narayanamurthi,* for the 1st and 2nd Respondents in C.A. No. 572 of 1958.

V. V. Radhakrishnan, for the Public Prosecutor (*P. S. Kailasam*) on behalf of the State.

R.M. ——— *Sentence modified.*

Somasundaram and Ramaswami, JJ.
7th April, 1959.

Public Prosecutor *v.* Gundow.
Crl. Appeal No. 420 of 1958.

Criminal Law—Self-defence as a ground of excuse—If available to third parties—Extent of.

As a general rule in Criminal Law the right of one to go to the defence of another is co-extensive with the right of the other to defend himself. A person who goes to

the aid of another acts at his own peril and his right to defend the other cannot be greater than the other's right to defend himself at that time. In other words a person accused of homicide while he went to the defence of another, cannot avail himself of the right of self-defence unless both he and the one defended were free from fault in bringing on the difficulty. Every circumstance that would be relevant to a plea of self-defence by the person to whose aid the accused went will be also relevant to show justification on the part of the accused to the same extent as if the homicide had been committed by the accused in his own defence.

[English and American Case-law and Tests referred].

V. V. Radhakrishnan, for Appellant.

K. V. Sankaran, for Respondent.

V. L. Ethiraj, Amicus Curiae.

R.M. —— *Appeal dismissed.*

Balakrishna Ayyar, J.
7th April, 1959.

The Hindu *v.* Working Journalists of the Hindu.
W.P. Nos. 427 & 428 of 1958.

Industrial Disputes Act (XIV of 1947), *section* 11—*Jurisdiction of Court or Tribunal under—Labour Court or Industrial Tribunal—If has jurisdiction to proceed with an adjudication referred to it even after the dispute loses its character as an industrial dispute—Subsequent facts—Whether relevant.*

It is now well-settled that an individual dispute will not in itself be an industrial dispute within the meaning of the Industrial Disputes Act, unless it is supported by a majority of the workers. Though a dispute may be an industrial dispute on the date it was referred to the Labour Court for adjudication, it may lose its character as such at a later date. Where an individual dispute supported by a majority of the workers, was referred to the Labour Court for adjudication under section 10 of the Industrial Disputes Act, when the majority of the workers withdraw their support, the dispute would lose its character as an industrial dispute.

The jurisdiction conferred on a Labour Court or Tribunal is not a general jurisdiction like that of an ordinary civil Court but is a limited one given by the Statute that created it. An Industrial Tribunal or Labour Court would normally lose its jurisdiction under section 11 to proceed further in any matter referred to it when once the dispute goes out of the category of industrial disputes. Further, a Labour Court, like any other Court, must take notice of facts which have happened after the institution of the proceedings and a Court or Tribunal cannot pass futile or unrealistic orders. Courts have to mould their remedies to the actual facts before them and they cannot refuse to take notice of facts which have happened during the pendency of the proceedings before them. This rule will equally apply whether the subsequent facts relate to jurisdiction of the Tribunal or to other rights.

R. Ramamurthi Ayyar and *K. Sundararajan,* for Petitioner.

S. Mohankumaramangalam and *K. V. Sankaran,* for Respondents.

R.M. —— *Rule absolute.*

Somasundaram, J.
8th April, 1959.

P. T. B. Menon *v.* Govindakrishnan.
Crl. Rev. C. No. 341 of 1959.
Crl. Rev. P. No. 327 of 1959.

Criminal Procedure Code (V of 1898), *section* 488—*Petition for maintenance—Jurisdiction of Court —Place where the respondent last resided—What amounts to.*

In order that a Magistrate could entertain an application for maintenance under section 488, Criminal Procedure Code it must be established that the respondent last resided within his jurisdiction. The word reside means to settle or to take up one's abode permanently or for a considerable time and it cannot include casual visits to a place.

A person employed at Delhi and residing there cannot be deemed to have last resided at Madras merely because he happened to stay at Madras for a period of about 10 days while on leave.

(1942) 2 M.L.J. 134 : (1952) 2 M.L.J. 573, referred.

A. C. Muthanna, for Petitioner.

S. Chellaswami and *M. Thirugnanasundaram,* for Respondents.

V. V. Radhakrishnan, for The Public Prosecutor (*P. S. Kailasam*) for State.

R.M. ——— *Petition allowed.*

Rajamannar. C.J. and Ganapathia Pillai., J.
16th April, 1959.

Narayanaswami Iyer *v.* Union of India by General Manager, Southern Railway.
S.A. No. 1008 of 1955.

Railways Act (IX of 1890), sections 77 and 80—Scope and effect of—Notice of claim for loss or damage to goods—Goods consigned carried over several railways—Whether separate notices should be issued to each of the railway administrations—Section 80—If should be read with section 77.

Civil Procedure Code (V of 1908), section 80—Notice under—Railway carriers—Need for two notices, one under Railways Act and another under Civil Procedure Code.

Statutory notices to Government found in various enactments are only matters of procedure and are not matters of substantive rights. Section 77 of the Railways Act containing the rule as to notice of claim for loss or damage to goods consigned is one such provision. The liability of the Government as owning the several railway administration is not a liability created by the Railways Act but arises only in contract, subject to such limiting factors that are contained in the Railways Act. In its activity in running the railways the Government has not created any separate legal entities, capable of being sued against apart from the Central Government. Section 80 of the Railways Act does not have the effect of creating any such entities and the rule as to notice in section 77 of the Act has no relevance to the scheme of liability enacted in section 80 of the Act.

In cases of through traffic where the goods consigned is carried over several railways, one notice to the General Manager of any one of the railways concerned in the route over which the through traffic passed would be sufficient compliance with section 77 of the Railways Act. The section also does not lay down that such notice should be given to any particular railway administration such as the contracting railway or destination railway, etc.

(1955) 1 M.L.J. 79, differed and overruled.

(1952) 2 M.L.J. 24, referred and explained.

A.I.R. 1949 Pat. 329 and A.I.R. 1953 Assam 193 (F.B.), referred.

Section 77 of the Railways Act does not require that notice of claim for loss or damages should be given to every one of the General Managers of the different railways over which a through traffic occurs. The section contemplates only one notice and such a notice could be given to the General Manager of any one railway.

The question of notice under section 80, Civil Procedure Code, has no bearing on the liability of the Central Government in relation to the railways run by it and it could not govern the scope and application of section 77 of the Railways Act. The amendment of section 80, Civil Procedure Code, in 1948 inserting a special provision as to notice in case of railways could not have any effect on the question of liability of the Government, who now owns the several railway administrations after amalgamation.

Per curiam—It is desirable that the Central Government should undertake legislation dispensing with notice under section 80, Civil Procedure Code, in a case where notice under section 77 of the Railways Act has been given and also clarify as to which railway administration such a notice should be given in cases where through traffic passes over more than one railway administration of the Government.

R. Gopalaswami Ayyangar, for Appellants.

S. S. Ramachandra Ayyar, for Respondent.

R.M. ——— *Appeal allowed.*

Subramanyam, J. Adappa Chettiar *v.* Meenakshi.
19th March, 1959. S.A. No. 384 of 1957.

Limitation Act (*IX of* 1908), *Schedule I, Articles* 59 *and* 60—*Loan or deposit—How determined.*

While the presence or absence in a document of a promise to repay on demand a certain sum of money with interest at a specified rate would be material in considering whether the money was received as a deposit or a loan, that circumstance would not be conclusive on that question. The fact that the words 'payable on demand' are used in the instrument does not exclude the inference that the money was deposited.

The language of the document has to be considered in each case. The fact that the document is described as a letter is not by itself conclusive whether the transaction is one of loan or deposit.

A. Sundaram Ayyar, for Appellant.

R. Gopalaswami Ayyangar, for Respondent.

R.M. *Appeal dismissed.*

Ramachandra Ayyar, J. Siddiah Chettiar *v.*
26th March, 1959. Kanniah Chettiar.
C.R.P. No. 855 of 1958.

Madras Cultivating Tenants Protection Act (*XXV of* 1955), *section* 3 *and rule* 8 *of the Rules—Power of Revenue Court to implead parties—Scope and extent of.*

It is no doubt true that clause (*e*) of rule 8 of the Rules framed under the Madras Cultivating Tenants Protection Act relating to impleading parties is expressed in wide terms. But the rule should be read in conjunction with section 3 of the Act. The jurisdiction conferred upon the Revenue Court under the Act is circumscribed by the provisions of the Act. Under section 3 the Revenue Court is given power to decide cases of eviction filed by the landlord against the tenant. Rule 8 of the Rules has to be read consistent with this power. The addition of any party permitted under rule 8 is only to enable the Court to completely adjudicate all questions between the parties to the dispute in the matter of eviction. The rule does not enable the Court to implead any party for purposes of deciding disputes regarding title, etc.

D. R. Krishna Rao and *C. Kesava Rao,* for Petitioner.

D. Ramaswami Ayyangar and *P. R. Varadarajan,* for Respondent.

R.M. *Petition allowed.*

Ganapatia Pillai, J. Srinivasalu Naidu *v.*
30th March, 1959. Thangavelu Chettiar.
A.A.A.O. No. 95 of 1957.

Madras Agriculturists Relief Act (*IV of* 1938) *and amending Act* (*XXIII of* 1948), *section* 16—*Scaling down under—Applicability—Judgment-debtor applying to set aside the* ex parte *decree against him—Application not pressed in view of compromise entered into under which decree-holder gave up a portion of the decree—If estops the judgment-debtor from applying for scaling down the decree.*

The relief of scaling down of a decree under section 16 of the Madras Agriculturists' Relief Act, 1938, is a separate one which could be claimed by a judgment-debtor by a separate application as the provisions came into force only in 1949. The mere fact that the debtor did not apply for the relief at the time of the passing of the decree will not be a bar. This will be so in cases falling both under sub-section (1) or sub-section (2) of the section.

(1953) 2 M.L.J. 184, held not good law.

1959 S.C.J. 788 : (1959) 2 M.L.J. (S.C.) 55 : (1959) 2 An.W.R. (S.C.) 55 : A.I.R. (1959) S.C. 275, referred.

The fact that a judgment-debtor who applied for setting aside an *ex parte* decree passed against him did not press the same in lieu of the decree-holder agreeing to give up a certain sum out of the decree does not amount to an estoppel and the judgment-debtor will still be entitled to claim the relief of scaling down the decree under the Act.

P. S. Srisailam, for Appellant.

K. Thiruvenkatachari, for Respondent.

R.M. *Appeal allowed.*

Ramachandra Ayyar, J.
2nd April, 1959.

Kamakshi *v.*
Sinnachami Naidu.
C.R.P. No. 1606 of 1957.

Madras Cultivating Tenants Protection Act (*XXV of* 1955), *section* 3—*Applicability to cases of trespassers.*

Where there is an express allegation in a petition that the tenant has surrendered possession and later trespassed on the property, the procedure under section 3 of the Madras Cultivating Tenants' Protection Act could not apply. On the surrender by the tenant the relationship of landlord and tenant ceases between the parties and thereafter if there is a trespass the aggrieved party has to approach the Civil Court for remedy and not the Revenue Court under section 3 of the aforesaid Act.

M. Natesan, for Petitioner.

R. Ramasubba Ayyar, A. D. Sitaraman and *B. R. Dolia*, for Respondent.

R.M. —— *Petition allowed*.

[FULL BENCH]

Rajamannar, C.J., Ramachandra Ayyar and Ganapatia Pillai, J.
8th April, 1959.

Lakshmipathy Naicker *v.*
State of Madras.
W.P. Nos. 42 and 62 of 1956.

Madras Estates Land (*Abolition and Conversion into Ryotwari*) *Act* (*XXVI of* 1948), *sections* 12 *and* 15—*Petition for grant of ryotwari patta—Scheme of—Irrigation tank in an estate—When private land of the land-holder—Land-holder, if entitled to grant of patta as of right in respect of such tanks.*

In an estate as defined in the Madras Estates Land Act, 1908, a tank bed is not a communal poramboke. The property in the tank situate within the ambit of the estate would naturally vest in the proprietor. But his rights would be restricted in a tank which is the source of irrigation for the lands in the estate. The land-holder is under an obligation to preserve, maintain and repair such tanks and the ryots will have a right over the tank in the nature of easements. But there might be tanks in an estate in which the ryots would not have any rights customary or easementary. Such tanks would form the absolute property of the proprietor. In an ordinary ryotwari village it is not possible to conceive of the grant of a ryotwari patta with regard to a tank. As the object of the Madras Act XXVI of 1948 is to convert the zamindari estate into ryotwari tenure the provisions of the Act should be understood in relation to that purpose.

The scheme of sections 11 to 15 of the Act clearly shows that the right to a ryotwari patta in respect of the private lands of a land-holder is a matter for adjudication by the Settlement Officer and the land-holder has to make out his claim with reference to every field or survey number claimed by him.

An irrigation tank, though constructed on what was once the land-holder's private land, could not be held to be his private land so as to entitle him to the issue of a ryotwari patta under section 12 of the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948. Such a right could not be justified on any theory of appurtenant of accessory rights. Whether the particular lands constitute private land has to be decided in each case. A land-holder will not be entitled to the grant of ryotwari patta in respect of a tank merely because it is situate within the boundary of his private land. If it is found in an enquiry under section 15 of the Act, that having regard to its size and the quantity of water it is nothing more than a well or a pond the land-holder will be entitled to have it included in the patta of the land of which it is a part. If on the other hand it is held that the tank is a source of irrigation for other lands, the tank would be Government property and the land-holder will not be entitled to obtain a patta for the same although the land in which it stands or the surrounding land may be the private land of the land-holder and to which he may be entitled to a patta.

V. Vedantachari and *V. C. Srikumar*, for Petitioner.

The Advocate-General (*V. K. Tiruvenkatachari*) and the Additional Government Pleader (*K. Veeraswami*), for Respondent.

R.M. —— *Petition dismissed.*

Ramachandra Iyer, J.
15th April, 1959.

Rajagopalachariar *v.* State of Madras.
W.P. Nos. 41 & 42 of 1957.

Madras Land Revenue Surcharge Act (XIX of 1954) *and Madras Land Revenue (Additional Surcharge) Act (XXX of* 1955)—*Validity.*

It is now well-settled that under the scheme of the ryotwari settlement of land tenure in this part of the country the full ownership of the land is vested in the ryotwari proprietor and land revenue is a tax imposed by virtue of the prerogative right of the State and the liability to pay land revenue does not rest on any contract. This prerogative of the State has been followed by legislation, *viz.*, Madras Revenue Recovery Act, 1894. The actual levy of the tax was delegated to the Board of Revenue. A settlement once made would ordinarily hold good for a period of 30 years and the assessment could not be arbitrarily enhanced by an executive act of the Government during the period covered by the settlement as a settlement once arrived at is in the nature of an engagement between the Government and the ryotwari pattadar.

But this limitation cannot apply to the Legislature which has plenary powers of legislation. The Madras Land Revenue Surcharge Act (XIX of 1954) and Madras Land Revenue (Additional Surcharge) Act (XXX of 1955) being passed by the Legislature could not be assailed on the ground that if such an act has been done by the Executive it would be invalid as contravening the terms of the settlement. The Madras Acts XIX of 1954 and XXX of 1955 are valid enactments and are not discriminatory and do not violate Artilce 14 of the Constitution.

V. C. Viraraghavan and *P. S. Balakrishna Ayyar,* for Petitioner.

The Advocate-General (*V. K. Thiruvenkatachari*) and The Additional Government Pleader (*K. Veeraswami*) for Respondent.

R.M. *Petition dismissed.*

Subramanyam, J.
16th April, 1959.

Venkatasubramaniam *v.* Venkatasubbier.
S.A. No. 95 of 1957.

Practice—Plaintiff claiming to succeed to the estate of a deceased as collateral heir—Onus of proof.

Where a person claims to succeed to the estate of a deceased as collateral heir, the rule as to proof is that the person who so claims should set out the pedigree showing the names of the common ancestor from whom he and the last male-holder are descended or showing at any rate the names of the brothers from whom the claimant and the last male-holder are descended and prove the geneological table in all its stages, that is to say, as regards each individual intermediate ancestor of the claimant and the last male-holder right up to the common ancestor or the brothers.

K. S. Desikan and *K. Raman,* for Appellant.

K. S. Ramamurthi and *T. R. Mani,* for Respondents.

R.M. *Appeal allowed.*

Rajamannar, C.J. and Ganapathia Pillai, J.
21st April, 1959.

Muthia Chettiar *v.* Sa Ganesan.
A.A. O. No. 21 of 1959.

Representation of the People Act (XLIII of 1951), *sections* 77 (1) *and* (2) *and* 123 (6)—*Incurring of election expenses in excess of the permitted amount—Contravention of section* 77 (2)—*When a corrupt practice under section* 123 (6)—*Election expenses—What are—Value of free services—If to be included in Election expenses.*

A mere contravention of section 77 (1) or section 77 (2) of the Representation of the People Act, namely omission to include certain items of expenditure in the

account of election expenses will not by itself amount to a corrupt practice under section 123 (6) of the Act. Nor could an election candidate be guilty of corrupt practice by reason of the fact that certain vouchers filed by him for the expenses were not in accordance with law.

In calculating the total expenses incurred by a candidate on an election, only those items incurred or authorised by the candidate or his election agent that should be taken into account. It is not incumbent on the candidate to put a valuation on the free services rendered by others and add the same to the amount of expenses incurred.

(*English Case-law reviewed —Scheme of the provisions of the earlier Act and the scope of subsequent amendment explained*).

M. K. Nambiyar and *K. K. Venugopal*, for Appellant.

S. Mohan Kumaramangalam and *K. V. Sankaran*, for Respondent.

R.M. ——— *Appeal allowed.*

Rajagopalan, J. Venkatesan *v.* Maruda Padayachi.
21*st April*, 1959. C.R.P. No. 626 of 1958.

Madras Cultivating Tenants Protection Act (*XXV of* 1955), *section* 3 (2) (*b*) *and Tanjore Tenants and Pannaiyal Protection Act* (*XIV of* 1952)—*Extension of Madras Act* (*XXV of* 1955) *to Tanjore by Madras Act* (*XIV of* 1956)—*Acts injurious to land done before the coming into force of Act* (*XIV of* 1956)—*If a ground for eviction.*

Before the extension of the Madras Cultivating Tenants Protection Act, 1955, to Tanjore District, the provisions of Madras Ordinance XIV of 1952 and then the provisions of Madras Act XIV of 1952 applied to the District. One of the grounds of eviction of a tenant under those statutory provisions was that the tenant was guilty of acts injurious to the land. A similar provision is also contained in the later Madras Act XXV of 1955 which came into force from 1st October, 1956.

Even a tenant of land in Tanjore District who has been guilty of an act of waste prior to 1st October, 1956, could still be evicted under section 3(2) (*b*) of the Madras Cultivating Tenants Protction Act even though the said Act came into force in that area only from 1st October, 1956. The expression 'has done' indicates that the Act complained of should necessarily date back earlier to the date on which the Act was brought into force. Digging a deep pit in the land is an act injurious to the land.

T. S. Kuppuswami Ayyar, for Petitioner.

S. Mohan Kumaramangalam and *K. V. Sankaran*, for Respondent.

R.M. ——— *Petition allowed.*

Ramachandra Iyer, J. Doraiswami Pillai *v.* Rasu Nattar
21*st April*, 1959. C.R.P. No. 315 of 1959.

Madras Cultivating Tenants Protection Act, (*XXV of* 1955), *section* 4 (2) *and* (5)—*Application under for restoration into possession—If governed by the restrictive provisions under sub-section* (2)—*Validity.*

The terms of sub-section (5) of section 4 of the Madras Cultivating Tenants Protection Act are wide enough to include every person who would come within the definition of 'cultivating tenant' under the Act. It would comprehend a case not only of a cultivating tenant who would be entitled to come under sub-section (1) but also of others who had in their possession more than 6 2/3 acres of wet land. The exemption limit prescribed under section 4 (2) would apply only to a case under section 4 (1) of the Act and not to cases under section 4 (5). The sub-section is not discriminatory and is not invalid.

A .Sundaram Ayyar, for Petitioner.

S. Mohan Kumaramangalam, *K. V. Sankaran* and *S. Ramaswami*, for Respondent.

R.M. ——— *Petition dismissed.*

[FULL BENCH.]

Rajamannar, C.J., Ramachandra Iyer and Ganapathia Pillai, JJ.
25th February, 1959.

Muppadathi Pillai *v.* Krishnaswami Pillai.
S.A. No. 1080 of 1953.

Specific Relief Act (I of 1877), sections 39 and 41—Scope and applicability.

Section 39 of the Specific Relief Act embodies the principles of *quia timet* actions in which a party is allowed to anticipate a danger and institute a suit to cancel a document. Three conditions are requisite for the exercise of the jurisdiction of the Court under that section : (1) the instrument should be such that it is void or voidable against the plaintiff ; (2) the plaintiff should reasonably apprehend serious injury by the instrument being left outstanding ; and (3) the Court should consider it proper to grant the relief of preventive justice. There could be no reasonable apprehension of any injury to a plaintiff where a third party asserting a hostile title to that of the plaintiff creates a document. To such cases section 39 could have no application and consequently the Court could have no jurisdiction under section 41 of the Act to direct payment of compensation.

(1950) 2 M.L.J. 587 and 37 M.L.J. 113, referred.

K. Vaitheeswaran, for Appellant.

Messrs. Chetty, Shetty and *V. Meenakshisundaram,* for Respondent.

R.M. ——— *Reference answered accordingly.*

Subramanyam, J.
3rd March, 1959.

Rangaraja Iyengar *v.* Achi Kannammal.
S.A. No. 84 of 1957.

Madras Land Encroachment Act (III of 1905), section 2—Scope of—House-sites—What are—Whether buildings should be actually built on the site to render a site house-site.

Madras Estates (Abolition and Conversion into Ryotwari) Act (XXVI of 1948), section 3 (b)—Applicability of Land Encroachment Act to house-sites in estates.

In order that a land may properly be described as house-site within the meaning of section 2 of the Madras Land Encroachment Act, 1905, it is not necessary that there should be a residential building actually constructed and standing on the site. Lands which are within the limits of the gramanatham and on which buildings or sheds may be put up when necessary should also be house-sites within the meaning of the section whether such buildings are constructed or not.

The provisions of section 3 (*b*) of the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948, vests all the lands in the erstwhile estates in the Government and makes certain Acts applicable in ryotwari areas applicable to those lands also. The provisions as to vesting of lands under section 3 (*b*) of the Act should be read so as to be in conformance with the provisions regarding the applicability of the enactments relating to ryotwari areas. House-sites in gramanatham, therefore, could not stand vested in the Government under section 3 (*b*) of the Estates Abolition Act.

G. Jagadisa Ayyar, for Appellant.

P. S. Chandrasekhara Ayyar and *P. S. Ramachandra Ayyar,* for Respondent.

R.M. ——— *Appeal allowed: Leave granted.*

Rajagopalan, J.
26th March, 1959.

Narayanaswamy *v.* Ramier.
C.R.P. No. 419 of 1958.

Madras Indebted Agriculturists (Repayment of Debts) Act (I of 1955), section 2—Explanation I—*Scope of.*

Explanation I of section 2 of the Madras Indebted Agriculturists (Repayment of Debts) Act provides that where a Hindu joint family is an agriculturist as defined in the Act every coparcener thereof shall be deemed to be an agriculturist unless he falls under one or other of the sub-clauses (*i*) to (*v*). But the converse of this is not true. Where a joint family ceases to be an agriculturist as defined under the Act it cannot be said that every member of that joint family also ceases to be an agriculturist.

R. Viswanathan, for Petitioner.

T. R. Ramachandran, for Respondent.

R.M. ——— *Petition allowed.*

Balakrishna Ayyar, J.
8th April, 1959.

Royal Printing Works *v.* Industrial Tribunal, Madras.
W.P. No. 374 of 1958.

Industrial Disputes—Carelessness on the part of an employee—If could be punished.

Obiter.—Carelessness on the part of an employee can often be productive of more harm than deliberate wickedness or malevolence. Carelessness and indifference to duty on the part of an employee in relation to his work, if established by evidence would justify serious punishment by the employer.

M. P. Sundararajan, for Petitioner.

The Additional Government Pleader (*K. Veeraswami*), *S. Mohan Kumaramangalam* and *K. V. Sankaran,* for Respondent.

R.M. ——— *Petition dismissed.*

Ramachandra Iyer, J.
21st April, 1959.

Ramaswami Naidu *v.* Salammal.
C.R.P. No. 1622 of 1958.

Madras Court-fees and Suits Valuation Act (*XXIV of* 1955), *Schedule II—Article* 11 (l) *and* (n)—*Filing of an award by an Arbitrator—Court-fee payable.*

Arbitration Act (*X of* 1940), *section* 14—*Filing of an award by an arbitrator—Court-fee payable.*

Under section 14 of the Arbitration Act there is a well-marked distinction between a case where an arbitrator himself applies to have the award filed and a case when the parties pray the Court for giving direction to him to file the award. Article 11 (*n*) of Schedule II of the Madras Court-fees and Suits Valuation Act would apply only to cases when the parties to an award seek a direction of the Court for directing an arbitrator to file the award. It cannot apply to cases when an arbitrator, without any direction of the Court, himself proceeds to file the award under section 14 (2) of the Arbitration Act. To such cases the residuary provision in Article 11 (*l*) of Schedule II of the Court-fees and Suits Valuation Act will apply.

D. Ramaswami Ayyangar and *S. Natarajan,* for Petitioner.

P. R. Varadarajan and The Additional Government Pleader (*K. Veeraswami*), for Respondents.

R.M. ——— *Petition allowed.*

Ramachandra Iyer, J.
22nd April, 1959.

Panchayat Board, Elathur *v.* Inspector of Local Boards.
W.P. No. 934 of 1958.

Madras Village Panchayats Act (*X of* 1900), *section* 3 (2) (*d*)—*Scope of Notice under.*

Under section 3 (2) (*d*) of the Madras Village Panchayats Act, 1950, an obligation is cast on the Inspector to give sufficient and reasonable notice to the Panchayat or Panchayats concerned before taking action under clause (*b*) or (*c*) of the section. This obligation cannot be evaded in the guise, that some subordinate officer had already appraised the panchayats concerned about the proposed action when it is proposed to take away a portion of the area of a Panchayat to form a new panchayat, the notice to the affected panchayat under section 3 (2) (*d*) of the Act should give the details of the lands that are proposed to be taken away so that the panchayat could consider the same and make its representations.

K. Parasaran and *V. Gopinathan,* for Petitioner.

The Additional Government Pleader (*K. Veeraswami*), for Respondent.

R.M. ——— *Rule absolute.*

Somasundaram, J.
24th April, 1959.

Thirupathi Chettiar, *In re.*
Crl. Rev. Case No. 738 of 1958.
Crl. Rev. Petition No. 706 of 1958.

Madras Gaming Act (*III of* 1930), *sections* 5 *and* 6—*Officer empowered to issue warrant for search himself conducting the search—Seizure of instruments of gaming—When evidence—'Common gaming house'—What is.*

It is no doubt true that under section 5 of the Madras Gaming Act it is open to a Police Officer empowered to issue a search warrant to himself conduct the search in-

stead of issuing a warrant to his subordinate. The instruments of gaming, if any, seized during such a raid would be evidence under section 6 of the Act in such cases also.

But in order to raise the presumption under section 6 of the Act, the officer issuing the warrant or making a raid should be satisfied that the place was used as a common gaming house. Mere gaming in a place will not make it a 'common gaming house' which has a particular meaning under the Act.

B. T. Sundararajan, for Petitioner.

The Public Prosecutor (*P. S. Kailasam*), for Respondent.

R.M. *Conviction set aside.*

Ramachandra Iyer, J.
24th April, 1959.

Saradambal *v.*
Chief Controlling Revenue Authority.
W.P. No. 214 of 1957.

Stamp Act (*II of* 1899), *section* 57 (1)—*Reference to High Court under—If the Revenue Authority could be directed to refer a case by the issue of a writ—Difference between a reference by the Revenue Authority and a reference under directions of High Court.*

Constitution of India (1950)—*Article* 226—*Issue of writ under—If could apply to cases under section* 57 (1) *of the Stamp Act.*

It may be that on the terms of section 57 of the Stamp Act the Chief Controlling Revenue Authority would have jurisdiction to refer any matter under that section to the High Court only if it is pending before him. When once the Revenue Authority has decided a matter there would be no right to make a reference to the High Court.

But in cases arising under Article 226 of the Constitution when the assistance of the Court is sought to issue as appropriate writ to direct a reference under section 57 (1) of the Stamp Act the pendency of the case before the Revenue Authority is not of much importance. While the Revenue Authority may not have power to refer a matter under section 57 (1) of the Stamp Act when it is not pending before it the High Court can under Article 226 of the Constitution direct the Revenue Authority to refer a case under the section even after Revenue Authority has decided the matter finally.

A.I.R. 1958 All. 320, differed.

N. K. Mohanarangam Pillai and *N. K. Pattabiraman*, for Petitioner.

The Additional Government Pleader (*K. Veeraswami*), for Respondent.

R.M. *Directions given.*

Somasundaram, J.
1st May, 1959.

Oomayan *alias* Baluchamy, *In re.*
Crl. Rev. Case No. 347 of 1959.
(Case. Ref. No. 11 of 1959.)

Criminal Procedure Code (*V of* 1898), *section* 361—*Procedure under—If applicable to deaf and dumb accused.*

The procedure indicated under section 361 of the Criminal Procedure Code cannot be applied to the case of a deaf-mute because under that section whenever any evidence is given in a language not understood by the accused it should be interpreted to him in open Court in a language understood by him. A deaf and dumb man can understand by signs and gestures, which do not form a language within the meaning of section 361.

The Public Prosecutor (*P. S. Kailasam*), for the State.

R.M. *Reference returned.*

Ramachandra Ayyar, J. Sundaram *v.* Karuppuswami.
12th May, 1959. W.P. No. 796 of 1958.

Madras Village Panchayats Act (*X of* 1950), *section* 12 (6)—*Electoral rolls—Persons whose names were not on the electoral rolls of the Panchayat but who were directed to be included in the same—If can vote at an election.*

Section 12 (6) of the Madras Village Panchayats Act gives an unqualified right to all persons whose names are found on the electoral rolls of a Panchayat to vote at an election and there is no limitation that such names should be in the list before the receipt of nominations. Even those whose names have been included in the list just before the date of the election would be entitled to vote. But the sub-section is equally clear that persons whose names are not on the rolls of the Panchayat would have no right to vote at the election. The fact that such persons had in their hands orders of the appropriate authority directing their names to be included in the electoral rolls of the Panchayat would not make any difference.

T. Venkatadri and *P. R. Gokulakrishnan,* for Petitioner.

S. Mohan Kumaramangalam and The Additional Government Pleader (*K. Veeraswami*), for Respondents.

R.M. *Petition allowed.*

Subramaniam, J. Thanappa Kounder, *In re.*
26th June, 1959. Crl.M.P. No. 717 of 1959.

Criminal Procedure Code (*V of* 1898), *section* 145 (1)—*Scope and applicability.*

In order that a dispute relating to possession of land might give jurisdiction to a Magistrate to take action under section 145 (1), Criminal Procedure Code, the dispute need not be one relating to land or building claimed by a person as owner. Even the possession of a trustee or guardian will be protected under the provisions. So long as one person claims to be in possession to the exclusion of others and alleges that some other person seeks unlawfully by force to interfere with his possession which, if it is likely to lead to a breach of the peace, would justify and necessitate a Magistrate taking action under section 145, Criminal Procedure Code.

K. Narayanaswami Mudaliar, for Petitioner.

R.M. *Petition dismissed.*

Balakrishna Ayyar. J. Workers *v.* Manager, United
29th June, 1959. Bleachers (Private) Ltd.
W.P. No. 62 of 1959.

Industrial Disputes Act (*XIV of* 1947), *section* 2 (3) (*vi*) *and Schedule I, item* (*v*)—*Public utility service—'Cotton textiles'—If bleaching of cotton textiles is part of cotton textile industry to make it a public utility service.*

Schedule I of the Industrial Disputes Act enumerates certain industries which could be declared under the Act as public utility services. The cotton textiles industry which is item 5 in the Schedule would comprehend the entire process from the receipt of the cotton or yarn to the final stage when it is ready to go to the market and hence any industry engaged in bleaching cotton textiles should also be deemed to be engaged in the textile industry. The textile process, in its normal and well-understood sense, is large enough to include, in the present stage of development of the industry, bleaching, dyeing and other process required to finish the produce and make it marketable.

R. Ramasubbu Ayyar, A.D. Sitaraman and *B. R. Dolia,* for Petitioner.

V. Tyagarajan, M. R. Narayanaswami and *N. Kannan,* for Respondent.

R.M. *Petition dismissed.*

Ganapatia Pillai, J. Ganapathi Pillai *v.* Ekambaram.
10th March, 1959. C.R.P. Nos. 1851 and 1854 of 1957.

Madras Indebted Agriculturist (Re-payment of Debts) Act (I of 1955), *section* 4 *and Madras Indebted Agriculturists (Temporary Relief) Act (V of* 1954)—*Effect of, on limitation for actions for recovery of debt—Debt—If becomes payable by instalments—Limitation Act (IX of* 1908), *Article* 74—*If applicable.*

The combined effect of the two Madras Acts, V of 1954 and I of 1955, is to extend the period of limitation for recovery of certain debts against agriculturists by a period of one year, one month and 26 days. The effect of section 4 of Madras Act I of 1955 is not to attract the provision of Article 74 of the Limitation Act which applies to cases of promissory notes or bonds under which the debts are made payable by instalments. The fact that the debt due by an agriculturists has been made payable by instalments by the Legislature would not convert the promissory note or bond into one payable by instalments within the meaning of Article 74, which deals with the classification of the instruments under which money is payable and has no relevance to subsequent legislative enactments which make a debt payable in instalments, which is otherwise payable in lump-sum.

V. S. Rangachari and *N. Srinivasan*, for Petitioners.

R. T. Gopalakrishnan, for Respondent in C.R.P. No. 1854 of 1957.

R.M. *Petition dismissed.*

Ramaswami, J. Ramaswami *v.* Muniswami.
31st March, 1959. S.A. No. 589 of 1957.

Easements—Easements of necessity and quasi-easements—Difference between—Right of irrigation from a common well—If a quasi-easement.

There is a clear distinction in law between easements of necessity and quasi-easements. Apparent and continuous easements which are necessary for the enjoyment of the dominant tenement in the state in which it was enjoyed at the time when it was severed from the servient tenament are called quasi-easements. While in case of easements of necessity, the necessity may be absolute, in cases of quasi-easements the necessity is a qualified one, *viz.*, that without it the property is not capable of being enjoyed in the way it was enjoyed before.

A right of irrigation is both apparent and continuous and is a quasi-easement.

A. Nagarajan and *A. Viswanathan*, for Appellant.

C. Natarajan, for Respondent.

R.M. *Appeal allowed.*

Ramachandra Iyer, J. Sambasiva Chetty *v.* Mannankatti.
3rd April, 1959. A.A.O. No. 326 of 1958.

Workmen's Compensation Act (VIII of 1923), *section* 30—*Appeal under—Appeal filed without depositing the amount awarded as compensation—Return and re-presentation with deposit—If original presentation of appeal may be deemed proper by the subsequent deposit.*

An appeal presented under section 30 of the Workmen's Compensation Act without a certificate of the deposit of the amount of compensation awarded is not a proper presentation. Subsequent production of the certificate after the period of limitation could not validate the original invalid presentation.

P. Muthukumaraswami Mudaliar and *Venkatachalapathi*, for Appellant.

R. Punyakoti Chettiar and *T. S. Sundaram*, for Respondent.

R.M. *Appeal dismissed.*

Ganapatia Pillai, J. Palaniswami *v.* Palaniswami.
3rd April, 1959. C.R.P. No. 1 of 1959.

Elections—Elections to panchayat, municipalities or local bodies—Election dispute—Power of tribunal to allow amendment—Scope and extent of.

It is no doubt true that in cases of municipal and panchayat elections there is no specific power conferred upon the tribunals appointed to decide election disputes, to allow amendments to an election petition. But such a power is exercised by

those tribunals also analogous to the power exercised by civil Courts under Order 6, rule 17, Civil Procedure Code. But the power does not extend to allowing a new charge to be added after the period of limitation has expired.

T. R. Srinivasan, for Petitioner.

S. Mohan, for Respondent.

R.M. ——— *Petition dismissed.*

Ramachandra Iyer, J. Qhamunnissa Begam *v.* Fatima Begam.
7th April, 1959. C.R.P. Nos. 1167 and 1734 of 1958.

Madras Court-fees and Suits Valuation Act (XIV of 1955), *section* 37 (2)—*Suit by a Mahomedan co-sharer for partition—Claim of share in properties on the basis that they are joint properties though put in the name of defendants—Court-fee if should be paid on the market value of the shares claimed.*

Where a plaintiff, a Mohamedan co-sharer, claims partition and possession of his share in the estate of a deceased on the footing that though several items of properties were standing in the name of other co-sharers they really belong to the estate of the deceased, he could value the relief under section 37 (2) of the Madras Court-fees and Suits Valuation Act. So long as there is no allegation in the plaint that any of the co-sharers were claiming any item adversely to the others, the plaintiff should be deemed be in joint possession of the same. Where the plaintiff claims his share of moneys standing in the name of defendants on the allegation that they were put in their name nominally and they were for the benefit of the family the suit would fall under section 37 (2) of the Act and the plaintiff need not pay Court-fee on the value of his share.

(1955) Andh. W.R. 348, referred.

S. K. Ahmed Meeran, for Petitioner in C.R.P. No. 1167 of 1958.

T. S. Krishnamurthi Ayyar, for Petitioner in C.R.P. No. 1734 of 1958.

The Additional Government Pleader (*K. Veeraswami*), *N. C. Raghavachari*, *N. S. Varadachari* and *S. V. Kumaraswami*, for Respondent in both.

R.M. ——— *Petition allowed.*

Basheer Ahmed Sayeed, J. Paramasiva Thevar *v.* Raju Vijayakumara.
8th April, 1959. A.A.O. No. 183 of 1958.

Practice—Benamidar—Decree-holder dying after preliminary decree—If true owner can come on record in final decree proceedings.

Where in a suit for redemption a decree-holder dies after the passing of the preliminary decree and before the final decree is passed, it will be open to a person who claims to be the true owner and states that the erstwhile plaintiff was only a benamidar for him, to come on record and continue the proceedings.

(1942) 2 M.L.J. 463 : I.L.R. (1943) Mad. 164 (F.B.) ; I.L.R. 51 Mad. 219 : 53 M.L.J. 568 ; 68 L.W. 683, referred to.

A. Sundaram Ayyar, for Appellant.

K. S. Ramamurthi and *P. Viswanathan*, for Respondent.

R.M. ——— *Appeal dismissed : Leave granted.*

Balakrishna Ayyar, J. Trichy-Srirangam Transport Co. *v.*
13th April, 1959. Industrial Tribunal.
W.P. No. 48 of 1958.

Industrial disputes—Tribunal under—Powers of—If governed by principles of res judicata—*If could direct the introduction of a provident fund scheme—Employees' Provident Fund Act (XIX of* 1952), *if a bar to creation of other provident funds.*

It is no doubt true that the Employees Provident Fund Act enables only the Central Government to extend the application of the Act to certain establishments. But that does not mean that an Industrial Tribunal deciding a dispuee under the

Industrial Disputes Act could not direct the introduction of a provident fund for the workers in the establishment concerned in the dispute. Such a scheme will be outside the Employees Provident Fund Act and may also differ in may respects from the fund created under the Act.

It is no doubt true that the provisions of the Code of Civil Procedure relating to *res judicata* do not apply to the Tribunal under the Industrial Disputes Act. But the principle of *res judicata* is not peculiar to Civil Procedure Code and it would apply to all proceedings which involve adjudication of disputed rights. Adjudications that have become final cannot be reagitated even before an Industrial Tribunal. Whatever matter is referred to a Tribunal by the Government should be pressed before it and if any party fails to press any such claim they cannot be allowed to raise it again in relation to that period.

Section 6 of the Madras Act XII of 1949 validating certain awards is unconstitutional as offending against Article 14 of the Constitution. Moreover it has not the effect of reviving an award whieh has lapsed before the Act was passed.

V. Tyagarajan and *P. V. Marthandam*, for Petitioner.

R. Ramasubba Ayyar, *A. D. Sitaraman*, *B. R. Dolia* and *V. S. Ramakrishnan*, for Respondents.

R.M. ——— *Orders accordingly.*

Ramaswami, J.
21st April, 1959.

Joseph Nadar *v.* Devadasan.
S.A. No. 1201 of 1956.

Travancore Christian Succession Act (*II of* 1092), *sections* 19 *and* 24—*Scope of—Husband succeeding to wife's property—Nature of interest taken.*

Among Syrian Christians in the Travancore-Cochin State governed by the Travancore Christian Succession Act the husband's right to his deceased wife's property is only a life interest terminable at death or re-marriage.

S. Padmanabhan, for Appellant.

N. D. Jose, (Amicus Curiæ) for Respondent.

R.M. ——— *Appeal dismissed.*

Balakrishna Ayyar, J.
22nd April, 1959.

Devichand Jestimull & Co. *v.*
Collector of Central Excise.
W.P. Nos. 88, 109 to 111 of 1959.

Sea Customs Act (*VIII of* 1878), *section* 167 *and Schedule—Item* 8—*Scope of.*

To bring a person within the penal provisions of Item 8 of the Schedule to section 167 of the Sea Customs Act it is necessary to ascertain either that he imported the gold or was connected in the import of the gold. That is either he should have arranged for the import or abetted the same or received the same immediately after the import. To be in possession of gold or to buy or sell the same after the process of importation is complete even assuming that such importation is unlawful and independently of the series of acts connected with such importation will not fall within the terms of the aforesaid provision.

D. R. Venkatesa Ayyar and *R. Rangachariar*, for Petitioner in W.P. No. 88 of 1959.

K. Rajah Ayyar, *K. C. Jacob* and *S. K. L. Ratan*, for Petitioners in W.P. Nos. 109 to 111 of 1959.

The Government Pleader (*B. V. Viswanatha Ayyar*), for Respondent in both.

R.M. ——— *Rule absolute.*

Ramachandra Iyer, J.
1st May, 1959.

Sajjan Bank (Private) Ltd. *v.*
Reserve Bank of India.
W.P. No. 373 of 1957.

Banking Companies Act (*X of* 1949), *section* 22—*Validity—If opposed to Article* 19 (1) *of the Constitution of India—Delegation of power to Reserve Bank—If unconstitutional.*

Section 22 of the Banking Companies Act, 1949, which introduces a complete system of licensing of banks by the Reserve Bank is not unconstitutional and is not opposed to the fundamental right of a citizen to carry on banking business. The system of licensing contemplated under the section applies only to the particular

system of banking where the customers are enabled to operate by cheques and the object of the licensing is only to regulate the business of banking in that form. The power of licensing is not vested with a mere officer of the Bank and the standard for the exercise of the power is laid down in the section itself, and the power granted to the Reserve Bank is not an arbitrary one. Nor could it be said that the delegation of the power to the Reserve Bank is in any way invalid.

(History of the establishment and function of the Reserve Bank and the passing of the Banking Companies Act traced).

K. Rajah Ayyar, S. Mohan Kumaramangalam and *K. V. Sankaran*, for Petitioner.

Messrs. King and *Partridge*, for Respondent.

R.M. ——— *Petition dismissed.*

Somasundaram, J. Kasi Thevar *v.* Chinniah Konar.
30th June, 1959. Crl.Rev. Case No. 124 of 1959.

Criminal Procedure Code (V of 1898), *section* 479-*A—Applicability—Proceedings under—Scope and effect of.*

The conditions necessary for the application of section 479-A of the Code of Criminal Procedure are that the Court before it delivers its judgment or at any rate at the time of delivery of the judgment must form an opinion that a particular witness or witnesses is or are giving false evidence. If the necessary materials were not placed before the Court before the Judgment and if the Court could not form any opinion about the falsity of the evidence the Court cannot record any finding under the section. If section 479-A could not apply the bar under sub-section (6) of the section would not also apply and such cases can be proceeded under sections 476 to 479 of the Code.

A.I.R. 1958 All. 364 and A.I.R. 1959 Punj. 145, differed.

(1958) M.L.J. (Crl.) 491, explained.

A.I.R. 1958 A.P. 657 and 1958 M.L.J. (Crl.) 233 and 859, referred.

M. Srinivasagopalan, for Petitioner.

The Public Prosecutor (*P. S. Kailasam*) for the State.

S. V. Jayaram, for the Accused.

R.M. ——— *Petition allowed.*

Rajagopalan, J. Rathinavel *v.* Natchiappa.
30th June, 1959. C.R.P. No. 1348 of 1958.

Madras Court-fees and Suits Valuation Act (XIV of 1955), *section* 70—*Court of first instance determining certain amount as due and Court-fee paid thereon—Appellate Court reducing the amount due—Refund of Court-fee paid on the excess—If permissible.*

Where the lower Court determined the amount due in a suit at a particular figure and a party was obliged to pay the Court-fee on that amount, and the appellate Court fixed the amount at a lower figure, the party who has paid Court-fee on the larger amount is entitled to claim refund of the Court-fee paid on the excess amount. Section 70 of the Madras Court-fees and Suits Valuation Act would govern such cases of mistake also, the mistake being that of the lower Court which is rectified by the appellate Court. A party in such a case need not wait to pay Court-fee till the disposal of the appeal or revision.

P. S. Chandrasekhara Ayyar and *P. S. Ramachandran*, for Petitioner.

The Additional Government Pleader (*K. Veeraswami*), for Respondent.

R.M. ——— *Petition allowed.*

Somasundaram and Ramaswami, JJ. Parvathi, *In re.*
2nd July, 1959. Crl. Appeal No. 113 of 1959.

Penal Code—Section 309—*Attempt to commit suicide—If punishable with punitive sentence.*

Per *Curiam* : While a Court would not be justified in treating an attempted suicide as a trivial offence, it cannot consider it as a very serious crime either, meriting deterent sentence.

T. L. Nagaraja Rao, for Appellant.

The Public Prosecutor (*P. S. Kailasam*), for State.

R.M. ——— *Appeal dismissed.*

[SUPREME COURT.]

S. R. Das, C.J., N. H. Bhagwati and M. Hidayatullah, JJ. *4th August,* 1959.

State of Saurashtra *v.* Memon Haji Ismail Haji. C.A. No. 185 of 1955.

"*Act of State*"—*Exercise of sovereign power—Extra-Provincial Jurisdiction Act.*

The act of the Dominion in assuming the administration of Junagadh was an act of State. The fact that the Sovereign allows the inhabitants to retain their old laws and customs does not make the Sovereign subject to them and all rights under those laws are held at the pleasure of the Sovereign.

There is nothing to prove that the Dominion has expressly or tacitly recognized the old rights. The burden of proving that lay on the respondent-plaintiff.

An act of State is an exercise of Sovereign power against an alien and neither intended nor purporting to be legally founded. A defence of this kind does not seek to justify the action with reference to the law but questions the very jurisdiction of the Courts to pronounce upon the legality or justice of the action.

161 E.R. 774 ; 98 E.R. 1045 ; 7 M.I.A. 555 at 578 and L.R. 42 I.A. 357 and L.R. 51 I.A. 360, considered.

C. K. Daphtary, for Appellant.

I. N. Shroff, for Respondent.

H. J. Umrigar, for Interveners.

G.R. ——— *Appeal allowed.*

[SUPREME COURT.]

S. R. Das, C.J., N. H. Bhagwati and M. Hidayatullah, JJ. *4th August,* 1959.

Godrej & Co. *v.* C.I.T., Bombay. C.A. No. 183 of 1956.

Income-tax Act (*XI of* 1922)—*Compensation to Managing Agents—Meaning of Capital receipt or revenue receipt.*

It is not always easy to decide whether a particular payment to a person is his income or whether it is to be regarded as his capital receipt. Eminent Judges have observed that "income" is a word of the broadest connotation and that it is difficult, and perhaps impossible, to define it by any precise general formula. Though in general the distinction between an income and a capital receipt is well recognised, cases do arise where the item lies on the border-line and the problem has to be solved on the particular facts of each case. No infallible criterion or test has been or can be laid down and the decided cases are only helpful in that they indicate the kind of consideration which may relevantly be borne in mind in appreciating the problem. The character of payment received may vary according to the circumstances. Thus, the amount received as consideration for the sale of a plot of land may ordinarily be capital, but if the business of the recipient is to buy and sell lands, it may well be his income. It is, therefore, necessary to approach the problem keeping in view the particular facts and circumstances in which it has arisen ".

Managing agents in consideration of the Company paying Rs. 7,50,000 as compensation for releasing the Company from the onerous term as to remuneration contained in the managing agency agreement accepted remuneration for the remaining term of their agency at 10 per cent. of the net annual profits in lieu of the higher remuneration which they are now entitled under the provisions of the existing managing agency agreement whether capital receipt or revenue receipt. (Question discussed.)

Cases considered : 12 T.C. 427, 16 T.C. 605, C.A. No. 340 of 1957 decided on 20th March, 1959 (Notes of Recent Cases, M.L.J. Vol. 116—16, page 45).

A. V. V. Sastri, for Appellant.

M. C. Setalvad, Attorney-General of India, for Respondent.

G.R. ——— *Appeal allowed.*

Ganapatia Pillai, J.
20th March, 1959.

Kanthimathi Mills *v.*
Spl. Land Acquisition Officer, Madras.
A.A.O. Nos. 41 and 42 of 1957.

Civil Procedure Code (*V of* 1908), *section* 144—*Restitution—Principle of—Applicability.*

The basis of the rule of restitution is not making the unsuccessful party disgorge any profit he had made out of the decree that was reversed on appeal but giving compensation to the successful party in the appeal for the loss which he had suffered by obeying the decree of the lower Court. Upon this principle, where a party has been obliged to deposit a certain amount into Court by the lower Court's order and the amount due by him has subsequently been reduced on appeal, it makes no difference to the applicability of the principle of restitution whether the original payment was made voluntarily or under threat of execution. Such a party would be entitled to claim interest by way of restitution, on the excess amount he was obliged to deposit by virtue of the decree of the lower Court.

V. S. Ramakrishnan, for Appellant.

The Government Pleader (*B. V. Viswanatha Ayyar*), *K. S. Ramamurthi* and *T. R. Mani,* for Respondent.

R.M. ——— *Orders accordingly.*

Rajamannar, C.J., and Ganapatia Pillai, J.
24th April, 1959.

Vajrapuri Naidu *v.*
New Theatres Carnatic Talkies.
L.P.A. No. 75 of 1958.

Madras City Tenants Protection Act (*III of* 1922), *sections* 3, 9, *and* 12—*Constitutional validity—If offending Articles* 19 (1) (*f*), 19 (5) *and* 31 (2) *of the Constitution—Scheme of the Act.*

The right given to a tenant under the Madras City Tenants Protection Act to acquire the land in his occupation is irrespective of considerations like the area of the land, the period or the purpose of the lease or the size or character of the building put up by the tenant. The contractual rights between a landlord and his tenant are not interfered with by the provisions of the Act till either a suit for ejectment is instituted by the landlord or a decree for that purpose is obtained. On the happening of this contingency two rights are conferred on the tenant, *viz.*, first to obtain compensation for the building under section 3 and second the right to purchase the land on payment of its value under section 9 of the Act. Section 9 of the Act is not opposed to Article 19 (1) (*f*) or (5) of the Constitution of India. Having regard to the history and object of the Act, the legislation is intended to advance public benefit and convenience and it does not offend against Article 31 (2) of the Constitution of India.

The proviso to section 12 of the Act should be limited to those cases where the stipulation in the contract regarding erection of building relating to facts such as the size, the cost, the design of the building and such other cognate matters. To construe the proviso to mean that a landlord could stipulate with the tenant prohibiting him from erecting any building on the land will abrogate the very protection given under the section to the tenants.

The word ' building ' in section 2 (1) of the Act will include business premises, and dwelling houses and would include a building like a cinema-theatre.

G. R. Gagadisan, P. S. Ramachandran and *V. S. Ramakrishnan,* for Appellant.

The Advocate-General (*V. K. Tiruvenkatachari*), *R. G. Rajan* and *T. Ramakrishna,* for Respondents.

The Additional Government Pleader (*K. Veeraswami*), for State.

R.M. ——— *Appeal dismissed.*

Rajamannar, C.J., and Ganapatia Pillai, J.
1st May, 1959.

Abdul Subhan Sahib & Sons *v.*
State of Madras.
W.A. No. 72 of 1958.

Madras Buildings (*Lease and Rent Control*) *Act* (*XXV of* 1949), *section* 13—*Exercise of power of exemption under—When improper.*

In deciding whether a particular order of exemption made by the State Government under section 13 of the Madras Buildings (Lease and Rent Control) Act, 1949,

is in conformity with the object and policy of the Act, the fact that the tenant was obtaining an unconscionable advantage at the expense of the owner of the property, *viz.*, by profiteering by sub-letting portions of the premises, is irrelevant. The Act provides a machinery by which it is open to the parties to have the fair rent fixed.

The Act no doubt takes away the unrestricted power of the landlord to evict tenants. But section 7 of the Act provides two sets of circumstances under which tenants could be evicted, *viz.*, that provided under sub-sections (2) and (3) of the section. In cases where a owner requires a non-residential building in the occupation of a tenant for his own use the policy of the Act is to deny the right of the landlord to evict a tenant unless the landlord himself does not occupy another non-residential building in the same city. Procuring a premises for a landlord for a purpose for which he would not be entitled to evict a tenant under the provisions of the Act (where an express provision exists) could not be in furtherance of the object of the Act. The Act itself provides for reasonable grounds of eviction and if a particular case does not fall within the provisions of the Act permitting such eviction the exercise of the power of exemption under section 13 of the Act for achieving such eviction would not be a reasonable exercise of the power.

What constitutes an arbitrary exercise of power under the section has to be decided on the facts of each case. Taking irrelevant factors into consideration, taking into consideration a reason which the legislature, by reason of the specific provision in the Act, had decided is not a ground justifying eviction of a tenant, would be instances of arbitrary exercise of the power of exemption. The Act provides for certain grounds of eviction and it would not be open to the Government to add to these permitted grounds either on the score of inconvenience of the landlord or on the ground that the landlord has made fair proposals to provide alternative accommodation to the tenant.

T. Venkatadri and *M. A. Sattar Sayeed*, for Appellant.

The Additional Government Pleader (*K. Veeraswami*) and *E. A. Viswanathan*, for Respondents.

R.M. ——— *Rule absolute.*

Ramachandra Iyer, J. Sha Shogalal *v.* State of Madras.
19*th May*, 1959. W.P. No. 996 of 1958.

Madras Buildings (Lease and Rent Control) Act (XXV of 1949), *section* 13—*Validity of an order of exemption under—How determined—Middlemen making profit—If could complain against an order of exemption from protection.*

Section 13 of the Madras Buildings (Lease and Rent Control) Act, 1949, is an enabling provision intended to meet a contingency when the remedy provided by the statute would be insufficient or inadequate in regard to a particular case. Apart from the question of hardship there may be cases where the restriction imposed on the landlord by the statute may benefit persons not within the contemplation of the Act and beyond the needs of the enactment.

The Rent Control legislation is not intended to protect middlemen to make profits. But the specific remedies open to a landlord under the Act are inadequate to render justice in such cases.

Though the definition of the terms ' landlord ' and ' tenant ' in the Act is wide enough to include a principal lessee who has sublet the property, still the object of the Act is only to protect the tenants in occupation though in its operation it has to give protection to a wider class of tenants. The presence of middlemen, far from achieving the object of the Act in regulating the rent, would add to it to the extent of his profits. If the benefit of the Act is extended to middlemen who take properties on lease, not for their own occupation, but as a business to earn profit by sub-letting, the constitutional validity of the Act itself would be doubtful.

In adjudging whether the exercise of the power under section 13 of the Act was proper a distinction should be made between the cases where the tenant is merely a middleman and the cases where the tenant is in actual occupation of the demised

property, though the Act no doubt would apply to both. In the later category of cases the power of exemption should be exercised with caution and if the Government aids a landlord by exempting the building in cases where he has been unsuccessful in an application under section 7 of the Act it would be a case of misuse of the statutory power as the exemption would enable an eviction and would therefore amount to a disregard of the standards fixed by the Act and opposed to its ject. This principle would not, however, apply to the former category of cases where by virtue of an exemption order only the middleman is denied. protection under the Act.

The issue of a notice is not a condition precedent to the assumption of jurisdiction under section 13 of the Act though a notice is necessary to the affected party on grounds of natural justice. The object of such a notice is to give the affected party such information as would enable him to know the facts on which the proposed action is taken.

V. Tyagarajan and *M. A. Rajagopalan,* for Petitioner.

The Additional Government Pleader (*K. Veeraswami*) and *V. S. Rangachari,* for Respondents 1 and 2.

R.M. ——— *Petition dismissed.*

Rajagopalan, J.
29th June, 1959.

Visvalingam Pillai *v.* Karthikeya Mudaliar.
C.R.P. No. 892 of 1958.

Madras Cultivating Tenants Protection Act (*XXV of* 1955), *section* 4-*B* (1) *&* (3)—*Applicability of to lease prior to the Act—Revenue Court if can order costs in proceedings under.*

Section 4-B (1) of the Madras Cultivating Tenants Protection Act would apply to an agreement of tenancy which the parties desire to enter into during the currency of the Act independent of the fact whether under the agreement the tenant in possession was liable to be evicted or not. The scheme of the Act is to provide for exchange of leases and counterparts even during the period when the Statute secures immunity to the tenant from eviction. The Act recognises the need for a lease in writing and a landlord is entitled to call upon the tenant to execute a lease in conformity with the provisions of the Statute. Failure to do so would entail the penalty under section 4-B (3) of the Act.

But the Revenue Court has no jurisdiction to order any party to pay costs to the other side in proceedings under section 4-B (3) of the Act though it has jurisdiction to levy fine.

T. S. Kuppuswami Ayyar and *R. Narayanan,* for Petitioner.

K. S. Naidu and *R. Krishnamurthi,* for Respondent.

R.M. ——— *Order modified in part.*

Ramachandra Iyer, J.
30th June, 1959.

Kutty Ettan Raja *v.* Madhavan.
C.R.P. Nos. 1888 and 1889 of 1958.

Madras Cultivating Tenants Protection Act (*XXV of* 1955), *section* 3 (2)—*Assignee of the interest of a cultivating tenant—If could be brought on record—Power of Revenue Court under.*

The provisions of the Code of Civil Procedure do not apply to proceedings under the Madras Cultivating Tenants' Protection Act. The Act itself does not provide for the assignee of the interest of a cultivating tenant to get himself impleaded as a party to the proceedings under the Act. Moreover the definition of the term 'cultivating tenant' itself makes it clear that the assignee of a cultivating tenant, could not become a cultivating tenant in respect of the holding held by his assignor the reason being that there could be no privity of contract between the landlord and the assignee of the lease. The question will be different in case of succession to the interest of a deceased cultivating tenant. Hence a Revenue Court under the Act has no jurisdiction to implead such assignees as parties to proceedings before it.

A. K. Sriraman, for Petitioner.

C. T. Verghese, for Respondent.

R.M. ——— *Petition allowed.*

[SUPREME COURT.]

S. R. Das, C.J., S. K. Das, A. K. Sarkar, K. N. Wanchoo and M. Hidayatullah, JJ.
14th August, 1959.

Raja of Venkatagiri *v.* State of Andhra Pradesh.
C.A. Nos. 188-190 of 1958.

Madras Estates (Abolition and Conversion into Ryotwari) Act (XXVI of 1948), *section* 20—*Scope.*

" The Abolition Act is one of the Acts included in the Ninth Schedule and is protected by Article 31-B of the Constitution of India. In the circumstances, the Court must interpret the Abolition Act as it finds it by giving the ordinary and natural meaning to the words used by the Madras Legislature and uninfluenced by any preconceived notion as to validity of the Abolition Act.

In our view the scheme of the Act is to render ineffective all rights created after July 1, 1945, for a period exceeding one year ".

A. V. V. Shastri, for Appellants.

H. N. Sanyal, Additional Solicitor-General, for Respondent.

K. R. Chaudhari, for Respondent No. 2.

G.R. *Appeals dismissed.*

[SUPREME COURT.]

S. R. Das, C.J., S. K. Das, A. K. Sarkar, K. N. Wanchoo and M. Hidayatullah, JJ.
20th August, 1959.

Hindustan Forest Co., Ltd. *v.* Lal Chand.
C.A. No. 161 of 1955.

Jammu and Kashmir Limitation Act, Article 115, *corresponding to Limitation Act* (*IX of* 1908), *Article* 85—*What is mutual account.*

In the present case there was no ' mutual account ' and hence the suit did not fall within Article 115 of the Jammu and Kashmir Limitation Act.

The law under Article 85 of the Indian Limitation is laid down in I.L.R. 58 Cal. 649.

S. K. Kapur, for Appellant.

Bhawanilal, for Respondent.

G.R. *Appeal allowed.*

[SUPREME COURT.]

B. P. Sinha, P. B. Gajendragadkar and K. N. Wanchoo, JJ.
21st August, 1959.

Gullapalli Nageswara Rao *v.* State of Andhra Pradesh.
C.A. Nos. 198 to 200 of 1959.

Chief Minister—Performance of statutory duty—Doctrine of bias—Applicability.

The principle was that when a person is subject to bias in favour of or against a party to a dispute then he ought not to take part in the decision of that dispute. In the present case, however, it could not be said that in performing a statutory duty the Chief Minister could be said to be biassed, nor had it been shown by evidence that he stood committed to any particular point of view so as to disqualify him from acting.

N. C. Chatterjee, for Appellant.

D. Narasaraju, Advocate-General of Andhra Pradesh, for Respondent.

G.R. *Appeals dismissed.*

[Supreme Court.]

B. P. Sinha, P. B. Gajendragadkar and K. N. Wanchoo, JJ.
21st August, 1959.

Shiva Jute Baling, Ltd. *v.* Hindley & Co., Ltd.
C.A. No. 262 of 1956.

Arbitration (Protocol and Convention) Act.

The award was not bad as it had been made while proceedings were pending in India under the Indian Arbitration Act and also because the award granted penal damages in contravention of the law as it prevailed in India.

C. B. Aggarwala, for Appellant.

B. Sen, for Respondent.

G.R. ——— *Appeal dismissed.*

[Supreme Court.]

S. J. Imam, A. K. Sarkar and K. N. Wanchoo, JJ.
27th August, 1959.

Gohar Begum *v.* Suggi *alias* Nazma Begum.
C.A. No. 11 of 1959.

Criminal Procedure Code (V of 1898), *section* 491*—Custody of a child—Recovery.*

" We further see no reason why the appellant should have been asked to proceed under the Guardians and Wards Act for recovering the custody of the child. She had of course the right to do so. But she had also a clear right to an order of the custody of the child under section 491 of the Code. The fact that she had a right under the Guardians and Wards Act is no justification for denying her the right under section 491. That is well established by case-law.

The learned advocate for the respondent said, we should not interfere with the order of the High Court as it was a discretionary order. The learned Judges, however, have not given any reason which led them to exercise their discretion in the way they did. We are not satisfied that the discretion was judicially exercised".

K. M. Desai, for Appellant.

Ganpat Rai, for Respondent Nos. 1 to 4 and 6.

K. L. Hathi, for Respondent No. 5.

G.R. ——— *Appeal allowed.*

[Supreme Court.]

S. R. Das, C.J., S. K. Das, A. K. Sarkar, K. N. Wanchoo and M. Hidayatullah, JJ.
28th August, 1959.

Babulal Parate *v.* State of Bombay.
C.A. No. 342 of 1956.

States Re-organisation Act (XXXVII of 1956), *section* 8*—Article* 3 *of the Constitution of India as amended by Constitution fifth Amendment Act—Article* 122.

On the construction of Article 3 of the Constitution " All that is contemplated is that the Parliament should have before it the views of the State Legislatures as to the proposal contained in the Bill and then it will be free to deal with the Bill as it thinks fit. The Proviso does not say that if and when a proposal is contained in the Bill and is modified subsequently by an amendment properly moved and accepted in Parliament there must be fresh reference to the State Legislature and a fresh Bill must be introduced."

We recognise that the formation of a new composite State of Bombay as in section 8 of the Act was substantial modification of the original proposal of 3 units contained in the Bill. That, however, does not mean that it was not a proper amendment of the original proposal or the State Legislature had no opportunity of expressing its views on all the aspects of the subject-matter of the proposal.

R. S. V. Mani, for Appellant.

C. K. Daphtary, Solicitor-General of India, for Respondent.

G.R. ——— *Appeal dismissed.*

[SUPREME COURT.]

S. J. Imam and K. N. Wanchoo, JJ.
3rd September, 1959.

Viswanath *v.* State of Uttar Pradesh.
Cr.A. No. 32 of 1958.

Criminal law—Right of private self-defence—Extent.

" When the appellant's sister was being abducted, even though by her husband, and there was an assault on her and she was compelled by force to go away from her father's place, the appellant will have the right of private self-defence of the body of his sister against the assault with the intention of abducting her by force and the right would extend to the causing of death ". In the present case the Court held that the right had not been exceeded and the appellant was entitled to be acquitted.

S. P. Sinha, for Appellant.

G. C. Mathur, for Respondent.

G.R. *Appeal allowed.*

Ramachandra Iyer, J.
1st July, 1959.

Kanakasabai *v.* Muthayyan.
C.R.P. Nos. 19 to 22 of 1959.

Tanjore Tenants and Pannaiyal Protection Act (XIV of 1952), *sections* 12 (1)*and* (13) (1) *—Power of Conciliation Officer to decide incidental questions—What orders are appealable.*

It is no doubt true that section 12 (1) of the Tanjore Tenants and Pannaiyal Protection Act, 1952, does not specifically enable a Conciliation Officer to decide the questions whether a particular person is a pannaiyal or not and whether a landlord is entitled to the exemption under the Act. Those questions could nevertheless be considered as incidental or collateral, but only as incidental, to the adjudication of the question of re-instatement of the dismissed pannaiyal under section 12 (1) of the Act. If, however, the question of such relationship is a substantial point in dispute the jurisdiction of the Conciliation Officer could be exercised only under section 13 (1) of the Act and any order made under that sub-section will be appealable under section 13 (2) of the Act.

T. S. Kuppuswami Ayyar and *T. R. Venkataraman,* for Petitioner.

S. Mohan Kumaramangalam, K. V. Sankaran and *S. Ramaswami,* for Respondents.

R.M. *Petitions allowed : Case remanded.*

Rajagopalan, J.
3rd July, 1959.

Gangadhara Mudaliar *v.* Chotulal Sowcar.
C.R.P. No. 1377 of 1958.

*Garnishee—Order against—*Ex parte *order—If could be set aside—If governed by any period of limitation.*

A Court has jurisdiction to set aside a garnishee order, made *ex parte,* even though the order has been made absolute, provided the Court is satisfied that there is sufficient justification for so doing. There is no specific provision of law either, prescribing any period of limitation to such applications.

Quaere.—Whether the delay in filing an application should be taken into account in deciding whether the *ex parte* order is to be set aside or not ?

N. C. Vijiaraghavachariar and *N. C. Srinivasan*, for Petitioner.

G. V. Subramanya Ayyar, for Respondent.

R.M. *Petition remanded.*

Balakrishna Ayyar, J. Pioneer Motors *v.* State Transport Authority.
6th July, 1959. W.P. No. 963 of 1957.

Motor Vehicles Act (III of 1939), *section* 64-A—*Power of State Transport Appellate Tribunal under to revise an order made in revision by the State Transport Authority.*

Section 64-A of the Motor Vehicles Act is wide enough to confer a power on the State Transport Appellate Tribunal to entertain a revision against an order made by the State Transport Authority in exercise of its revisional jurisdiction.

K. Parasuraman, for Petitioner.

The Additional Government Pleader (*K. Veeraswami*), for Respondent.

R.M. *Order quashed.*

Rajamannar, C.J., and Ganapatia Pillai, J. Collector of Tanjore *v.* Venkataswami Naidu.
13th July, 1959. S.T.P. No. 11 of 1959.

Madras Estates (Supplementary) Act (XXX of 1956), *section* 4—*Delay in filing an application under—If could be excused by the Special Appellate Tribunal.*

Limitation Act (IX of 1908), *section* 5—*If applicable to proceedings under the Madras Act (XXX of* 1956).

There is no specific provision in the Madras Estates (Supplementary) Act, 1956, which confers jurisdiction on the Special Appellate Tribunal to condone any delay in filing an application under section 4 of the Act nor has the Tribunal any inherent jurisdiction to excuse the delay in filing an application before it. The provisions of section 5 of the Limitation Act could not be invoked in such cases as they would not fall within any of the categories mentioned in the section.

The Government Pleader (*K. Veeraswami*), for Appellant.

R. Sundaralingam, for Respondent.

R.M. *Application dismissed.*

Ramaswami, J. G. S. Naidu, *In re.*
4th August, 1959. Crl. R. C. No. 1082 of 1958.
(Crl. R. P. No. 1035 of 1958.)

Madras City Police Act (III of 1888), *sections* 3 *and* 75—*Public place—What is—Verandah of a shop—If a public place.*

Section 3 of the Madras City Police Act defines a public place and it is now well settled that a 'public place' is one where the public go, no matter whether they have a right to do so or not. Places where the public are actually in the habit of going must be deemed to be a public place. As such the verandah of a shop may be deemed to be a public place.

M. S. Sethu and *R. N. George*, for Petitioner.

The Public Prosecutor (*P. S. Kailasam*), for State.

R.M. *Petition dismissed.*

[SUPREME COURT.]

S. K. Das, A. K. Sarkar and
K. Subba Rao, JJ.
28th August, 1959.

Rm. Ni. Ramaswami Chettiar *v.*
Official Receiver.
C. A. No. 207 of 1955.

Limitation Act (IX of 1908), *Article* 182 (5)—*Provincial Insolvency Act (V of* 1920), *section* 54—*Meaning of word ' void '.*

In section 54 of the Provincial Insolvency Act the word ' void ' means voidable and a transfer which can be avoided under section 54 of Provincial Insolvency Act, is valid as between the transferor and transferee and is void only against the Official Receiver and hence a transferee until the transfer is set aside is the only person entitled to execute the decree ; and any application for execution made by the transferee are proper applications made in accordance with law by a person competent to make the same to a proper Court. Even where the order of adjudication is based on the act of insolvency constituted by a transfer of property found to be a fraudulent preference, the transfer stands till it is set aside.

M. S. K. Aiyangar, for Appellant.

A. V. V. Shastri, for Respondent.

G.R.

Appeal dismissed.

[SUPREME COURT.]

S. R. Das, C.J., M. Hidayatullah
and K. C. Das Gupta, JJ.
7th September, 1959.

Radha Prasad Singh *v.*
Gajadhar Singh
C. A. No. 19 of 1954.

Practice—Appeal—Question of fact—Interference.

The question as to what should be the right approach for a Court of appeal in deciding a question of fact already decided in one way by the Judge in the Court of first instance, has often engaged the attention of the Court, though the views expressed have not been uniform. Emphasis has been laid in some cases on the importance of the Court of appeal deciding for itself the question of fact when the appeal is on fact, though remembering that it should not lightly do so not having had the advantage which the trial Judge had of seeing the witnesses. More emphasis has been laid in other cases on the importance of not reversing the trial Judge's findings of facts without compelling reasons. All the Courts in all the cases have stressed the rule which the Court of appeal should observe for themselves : that a Judge sitting in appeal not having had the opportunity of seeing and hearing the witnesses should think twice and more than twice before reversing the findings of fact arrived at by the trial Judge who has had that opportunity. To say that however is not to show that the Court of appeal will never reverse a finding of fact of the trial Court.

16 I.A. 105; L.R. (1898) 1 Ch. 704; (1947) 1 All E.R. 587; (1955) 1 All E.R. 326; (1950) S.C.R. 781; I.L.R. 43 Cal. 833, referred to.

L. K. Jha, for Appellant.

G. S. Pathak, for Respondent No. 1.

S. D. Sikhri, for Respondents Nos. 3 and 4.

G.R.

Appeal dismissed.

[SUPREME COURT.]

S. R. Das, C.J., S. K. Das, A. K. Sarkar,
K. N. Wanchoo and M. Hidayatullah, JJ.
10th September, 1959.

Rehman Shagoo *v.*
State of Jammu and Kashmir.
Cr. A. No. 60 of 1959.

Jammu and Kashmir Enemy Agents Ordinance—Explosive Substances Act (VI of 1908) *—Public Security Act—Article* 14 *of the Constitution of India.*

" Certain offences may be so heinous or serious that they may in certain circumstances be treated as a class and tried in a different way. The offence treated by section 3 of the Jammu and Kashmir Enemy Agents Ordinance is not found as

such in the Penal Code but is a new offence of an aggravated kind which may in the circumstances prevailing in the State be treated as different from the ordinary offences and may well be dealt with by a drastic procedure without encountering the charge of violation of the equal protection clause (Article 14).

In pith and substance the Ordinance dealt with public order and criminal law and procedure and could not come under the head "defence". The argument that the Ordinance was beyond legislative competence of His Highness was, therefore, rejected.

R. S. V. Mani, for Appellant.

Jaswant Singh, Advocate-General and *G. S. Pathak*, Senior Advocate, for Respondent.

G.R. —— *Appeal dismissed.*

[SUPREME COURT.]

S. R. Das, S. K. Das and M. Hidayatullah, JJ.
11th September, 1959.

The A.C.C. Ltd., (Chaibasa) *v.* Its Workmen.
C. A. No. 87 of 1958.

Industrial Disputes Act (XIV of 1947), *sections* 25-*C and* 25-*E—Lay off compensation.*

No hard or fast rule or test could be devised to determine whether any two or more units comprised one or separate establishments. It would be necessary to examine in each case the relationship between the units taking into consideration: (1) ownership, (2) control and supervision, (3) finance, (4) management, (5) geographical proximity, and (6) general unity of purpose and functional integrality. A consideration of these factors would be the basis of deciding whether the different units could be considered as parts of a single establishment.

In the present appeal the two units when considered in their true relationship constituted one integrated whole and consequently they formed one establishment for the purposes of section 25-C, consequently the Award of the Tribunal was set aside and the workmen's claim to lay off compensation under the Industrial Disputes Act was disallowed.

R. J. Kolah, for Appellant.

B. C. Ghosh, for Respondent.

G.R. —— *Appeal allowed.*

[SUPREME COURT.]

S. J. Imam and K. Subba Rao, JJ.
14th September, 1959.

State of Bihar *v.* Hiralal Kejriwal.
Cr. A. No. 36 of 1958.

Essential Commodities Act (X of 1955), sections 7 *and* 16—*Cotton Textile (Control of Movement Order* (1948), *section* 3—*Essential Supplies (Temporary Powers) Act (XXIV of* 1946)—*Criminal Procedure Code (V of* 1898), *section* 438.

An Order made or deemed to be made under the Commodities Ordinance, 1955, cannot be described as a law other than Essential Commodities Ordinance whereunder it is made. Such an Order is comprehended by clause (*a*) of section 16 (1) itself, and therefore clause (*b*) thereof has no application to it. In this view an interpretation different from that we have put on the provisions of section 16 of the Ordinance cannot be given to sub-section (2) of section 16 of the Act. For the reasons we have given in interpreting the provisions of section 16 of the Ordinance, we hold that under section 16 (2) both the Order and the Acts enumerated in the second part of it survived the expiry of the Ordinance and continued in force under the Act. For the above reasons we hold that the prosecution was validly launched against the accused under section 3 of the Order.

K. P. Verma and R. C. Prasad, for Appellant.

H. J. Umrigar and *B. P. Maheshwari*, for Respondents.

G.R. —— *Appeal dismissed.*

[SUPREME COURT.]

S. J. Imam and K. Subba Rao, JJ.
15th September, 1959.

Jethanand Betab *v.* Delhi Administration
Cr.A. No. 185 of 1957.

Wireless Telegraphy (Amendment) Act (XXXI of 1949), *section* 6 (1-*A*)—*Object of.*

" Act XVII of 1933 was passed to prohibit the possession of a wireless apparatus without a licence. Subsequently the Legislature thought that possession of a wireless transmitter was a graver offence, sometimes involving the security of State, and so an amendment was made in 1949 constituting the possession of such apparatus a graver offence and imposing a more severe punishment ".

M. B. Lall, for Appellant.

M. S. Bindhra and *R. H. Dhebar*, for Respondent.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

B. P. Sinha, P. B. Gajendragadkar and K. Subba Rao, JJ.
24th September, 1959.

Punjab National Bank *v.* Its Workmen.
C.A. Nos. 519-521 of 1958.

Trade Union .Act (XVI of 1926)—*Industrial Employment (Standing Orders) Act (XX of* 1926)—*Industrial Disputes Act (XIV of* 1947), *sections* 33 *and* 33-*A*—*Scope.*

"It can be justly claimed that though we have witnessed capital labour conflicts in our country, on the whole neither party has departed from the pursuit of peaceful methods, and both parties submit their disputes to be resolved in accordance with the provisions of the Act."

"Thus there can be no doubt that in an enquiry under section 33-A of the Industrial Disputes Act the employee would not succeed in obtaining an order of reinstatement merely by proving contravention of section 33 by the employer. After the contravention is proved it would still be open to the employer to justify the impugned dismissal on merits. That is a part of the dispute which the Tribunal has to consider because the complaint made by the employees is treated as an industrial dispute and all the relevant aspects of the said dispute fell to be considered under section 33-A ".

Regarding the "pen-down strike", the Court held, " we are prepared to concede that in the surcharged atmosphere, which generally accompanies strikes and when passions are aroused, a large scale and continuous pen-down strike may lead to untoward consequences. But, on the other hand,even in the case of such a strike the employer is not without a remedy. He may bar the entry of the strikers within the premises by adopting effective and legitimate methods, as in fact the bank did in the present case from April 23. He may call upon the employees to vacate, and, on their refusal to do so, take due steps to suspend them from employment, proceed to hold proper enquiries according to the standing orders, and pass proper orders against them subject to the relevant provisions of the Act."

Out of 150 employees if the Bank has failed to establish its specific case against any of the 136 employees, there is no reason why the general Rule should not prevail and employee should not get the relief of reinstatement.

H. N. Sanyal, Additional Solicitor General of India and *R. L. Anand*, for Appellant and Respondent in cross appeal.

M. C. Setalvad, Attorney General of India, for Respondent and appellant in cross appeal.

G.R. *Appeal dismissed with regard to* 136 *employees.*

Rajamannar, C.J., and Ganapathia Pillai, J. Meyappa Chettiar *v.*
7th April, 1959. Murugappa & Sons.
Appeals Nos. 150, 152 of 1952.

Transfer of Property Act (*IV of* 1882), *section* 82—*Scope of—Contribution—Principle of.*

Section 82 of the Transfer of Property Act proceeds on the basic principle of the unity of the mortgage debt. The principle of contribution comes into existence only with reference to the liability of the property which has borne the burden of more than one mortgage debt. The first part of the section deals with a case of mortgage over the property owned by two or more persons in distinct and separate rights. The second part deals with a case, where, out of two separate properties belonging to the same owner, one is mortgaged to secure one debt and subsequently both are mortgaged to secure another debt. The property which is subject to both the debts is held liable to contribute rateably to the second debt only after deducting the amount of the former debt from the value of the property out of which it has been paid. In both cases the right of contribution is available only against persons who stand in the position of co-mortgagors or their successors in interest or against the same property subject to two different mortgages. Apart from the statutory provisions a claim for contribution can be founded on the principles of a common burden shared by many people, but discharged by one, with the result that the remaining shares enjoyed the benefit of the discharge. This principle of law applies in many situations as between co-sharers or co-tenants, partners, co-owners, co-parceners and so on. The basis of contribution in all such cases is not only the common ownership of property but also a common liability which was discharged by one.

R. Gopalaswami Ayyangar, for Appellants.

T. Venkatadri, E. A. Viswanathan, C. Sundaram, K. Parasurama Ayyar, for Respondents.

R.M. *Orders accordingly.*

Balakrishna Ayyar, J. Metro Goldwyn Meyer (India) Ltd. *v.*
29th June, 1959. Industrial Tribunal, Madras.
W.A. No. 49 of 1959.

Industrial Disputes Act (*XIV of* 1947), *section* 10—*Retrenchment—Scope of the Tribunal's powers to inquire into the need for.*

It is not for a Tribunal under the Industrial Disputes Act to decide how the business of a company is to be conducted. Whether a future year would produce profits or loss is a matter for the management to anticipate and provide for. It may be that the anticipation of the management may turn out to be erroneous. But the responsibility to take a decision is theirs and the Industrial Tribunal has nothing to do with it. That the Tribunal is inclined to take a more opitimistic view of the prospects of a business is not relevant so long as the *bona fides* of the management in effecting retrenchment is not questioned. Further it is for the management to decide what work it will do and how many men it will employ to do it, whether they will expand their activities or contract it and so on. Nor is it necessary for a management to wait till actual loss occurs before effecting a retrenchment so long as their decision to effect retrenchment is *bona fide* and based on their normal business aspects and there is no question of any intention to victimise. It is not necessary to show that there is a loss *in praesenti* or actual reduction of business on the date of retrenchment to justify a decision of the management to effect a retrenchment.

V. Tyagarajan and *N. C. Raghavachari*, for Appellants.

D. Padmanabhan and *B. Kalyanasundaram*, for Respondents.

R.M. *Petition allowed in part.*

Ramachandra Ayyar, J.
1st July, 1959.

Parameswaran *v.* Sarveswaran.
C.R.P. No. 1027 of 1958.

Madras Court-fees and Suits Valuation Act (XIV of 1955), *section* 36 (1)—*Suit for accounts of dissolved partnership—Estimate by plaintiff—Court if can go behind.*

While it is true generally that a Court is not bound by the valuation of the relief given by the plaintiff its power to go behind it is also limited to ascertaining the real value from the allegations in the plaint, which should be assumed to be correct for the purpose. Its power is limited only to ascertain the plaintiff's estimate and not to substitute its own estimate. If the estimate given by a plaintiff is on the face of it a sham one or so obviously wrong the Court can ask the plaintiff to make a proper estimate. But mere inaccuracy in the estimate will not make it a sham one and it is not for the Court to embark upon an inquiry as to the result of an account taking. Reality and not accuracy is the test for ascertaining a proper valuation under section 36 (1) of the Madras Court-fees and Suits Valuation Act.

M. S. Venkatarama Ayyar and *V. Krishnan,* for Petitioner.

Messrs. Row and Reddy and The Additional Government Pleader (*M. M. Ismail*), for Respondents.

R.M. *Petition allowed.*

Ramachandra Ayyar, J.
1st July, 1959.

Lakshmana *v.* Thiagaraja Mudaliar.
C.R.P. No. 2120 of 1958.
C.R.P. No. 17 of 1959.

Madras Cultivating Tenants (Payment of Fair Rent) Act (XXIV of 1956), *section* 4 (3)—*'Pathukattu tenure'—If connotes a permanent right of occupancy—Fair rent—If could be fixed.*

Words and Phrases—'Pathukattu tenure'—Meaning of.

The word Pathukattu (Tamil) means a ryot's usual holding and does not imply necessarily a permanent tenancy. The mere use of the word ' Pathukattu ' in a tenancy does not mean that there is a permanent tenancy right in the land.

The limitation laid down in section 4(3) of the Madras Cultivating Tenants (Payment of Fair Rent) Act would not apply to cases where the period fixed under the contractual tenancy has expired and a landlord is entitled to apply to the Rent Court to fix the fair rent in respect of the tenancy continuing after the contract period. In fixing the fair rent the Rent Court would be entitled, and indeed bound, to take into consideration not only the income from the lands but also the trees standing thereon as part of the demised land.

V. Venkataraman, for Petitioner.

K. S. Naidu, for Respondent.

R.M. *Petition dismissed.*

Ganapathia Pillai, J.
3rd July, 1959.

Ahmed Rowther *v.* Bathumul Bai.
A.A.O. No. 356 of 1956.

Civil Procedure Code (V of 1908), *Order* 41, *rules* 23 *and* 25—*Remand by Appellate Court—Scope of.*

Rules 23 and 25 of Order 41 of the Code of Civil Procedure does not enable an Appellate Court to remand a suit for retrial merely on the ground that reception of additional evidence is necessary. Rule 23 refers to cases of remand where a decree is reversed on appeal and such decrees were based on a preliminary point. Rule

25 provide for an Appellate Court directing the trial Court to take additional evidence required and to return the evidence to the Appellate Court together with its findings, if necessary.

K. V. Srinivasa Ayyar, for Appellant.

A. Sundaram Ayyar and *P. Balasubramaniam*, for Respondents.

R.M. *Order set aside.*

Ganapathia Pillai, J. Paramasivan *v.* Sevasami.
3rd July, 1959. C.R.P. No. 388 of 1956.

Madras Indebted Agriculturists (Repayment of debts) Act (I of 1955), section 2(a)—Agriculturist—Exception—Joint family—Payment of kist in excess of the limit prescribed by Statute—Notional share of each member below the statutory limit—Such members if entitled to the benefits of the Act.

The liability to pay kist on lands owned by a Hindu joint family is an entire one and it will not be open to any member to say that he will pay the proportionate kist on his share of the family property unless there is a partition. So long as he remains joint he is liable to pay the entire land revenue due upon the family lands. Hence when such a family is assessed to land revenue exceeding the statutory limits every member of the family will be excluded from the benefit of the Act. It is not open to such a member to contend that his share of the land revenue, if a partition had taken place, would be below the statutory exception.

Petitioner not represented.

S. Jagannathan for *T. R. Ramachandran*, for Respondent.

R.M. *Petition dismissed.*

Balakrishna Ayyar, J. Sri Ranga Vilas Ginning Mills. *v.*
17th July, 1959. Industrial Tribunal, Madras.
W.P. No. 1019 of 1958.

Industrial Disputes Act (XIV of 1947), section 33 (2)—Jurisdiction of Tribunal under—Scope and extent of.

In disposing of an application under section 33 (2) of the Industrial Disputes Act for permission to dismiss an employee during the pendency of the adjudication of a dispute, the Tribunal has only to consider whether there was a *prima facie* case for dismissal of the workman or whether the management was actuated by improper motives or whether there was any unfair labour practice or victimisation involved in the action proposed to be taken. If there are no *mala fides* or unfair labour practice or victimisation involved the Tribunal is bound to give the permission asked for provided a *prima facie* case was made out for the proposed dismissal. It is not for the Tribunal to satisfy itself whether the charges framed against the employee has been proved.

(1953) S.C.J. 333 ; A.I.R. 1953 S.C. 241 ; (1957) S.C.J. 47 : (1956) S.C.R. 916 : A.I.R. 1957 S.C. 82 ; A.I.R. 1958 S.C. 79 : (1958) S.C.J. 255 : 1958 M.L.J. (Crl.) 208, referred.

M. R. Narayanaswami and *N. Kannan*, for Petitioner.

S. Mohan Kumaramangalam, K. V. Sankaran and *S. Ramaswami*, for Respondents.

R.M. *Petition allowed.*

Ramachandra Ayyar, J.
11th July, 1959.

Sri Pilaravaneswaraswami Temple *v.* Govindaram Varriar.
C.R.P. Nos. 1061 and 1522 of 1958.

Madras Cultivating Tenants (Payment of Fair Rent) Act (XXIV of 1956)—*Denial of the right of the tenant as cultivating tenant—If estops the landlord from suing for arrears of rent in civil Court—Jurisdiction of civil and revenue Courts.*

Every tenant of an agricultural holding will not be a cultivating tenant within the meaning of the Fair Rent Act. Hence the fact that a landlord denied the right of a tenant to apply under the Fair Rent Act will not estop him from claiming the rent through a civil Court. A Rent Tribunal under the Fair Rent Act will have to decide whether the tenant is a 'cultivating tenant' though incidentally and only incidentally it might also investigate whether there is at all the relationship of landlord and tenant between the parties. A civil Court in a suit to recover the rent is not bound by such incidental findings and if on its own investigation finds that the tenant is cultivating tenant, within the Act it may decline to pass a decree unless the fair rent is fixed by the Tribunal. The mere fact that the landlord took up a false plea before the Tribunal cannot relieve the civil Court of its duty to decide the question arising in the dispute.

A. Sundaram Ayyar, for Petitioner.

S. Sitarama Ayyar and *S. Rajarama Ayyar,* for Respondent.

R.M. *Petition allowed.*

Subrahmanyam, J.
30th July, 1959.

Pankajammal *v.* Sambamoorthy.
S.A. No. 795 of 1957.

Civil Procedure Code (V of 1908), *section* 73 (1) *and Limitation Act (IX of* 1908), *Article* 62—*Limitation for suits claiming rateable distribution—Time—How computed.*

Under Article 62 of the Limitation Act the time from which limitation runs for a suit against a defendant claiming rateable distribution under section 73 (1) of the Civil Procedure Code is the time when the defendant received the money. For purposes of Article 62 of the Limitation Act the defendant must be deemed to have received the money on the date of confirmation of the sale in cases where the defendant himself purchases and sets off the sale price against his decree.

K. S. Desikan and *K. Raman,* for Appellant.

A. Narasimhachari and *A. N. Rajagopalan,* for Respondent.

R.M. *Appeal dismissed.*

Ramaswami, J.
30th July, 1959.

Kasia Pillai *v.* Unnamalai Ammal.
S.A. No. 1047 of 1957.

Words and Phrases—'Sarvaswathanthramai' (Tamil)—Meaning of.

The word 'Sarvaswathanthramai' occurring in a settlement or gift deed indicates an absolute estate.

T. Venkatadri and *K. Natarajan,* for Appellant.

O. Radhakrishnan, for Respondent.

R.M. *Appeal dismissed.*

Ramachandra Ayyar, J.
31st July, 1959.

Karuppannan *v.* Sadaya Maistry.
C.R.P. No. 1925 of 1958.

Madras Court-fees and Suits Valuation Act (XIV of 1955), *sections* 41 (2) *and* 50—*Suit to set aside a summary decision—Court-fee payable.*

Section 41 (2) of the Madras Court-fees and Suits Valuation Act provides for valuation of suits to set aside a summary decision of a civil or revenue Court. Sec-

tion 50 is in the nature of a residuary section providing for cases not otherwise provided for in the Act. In suits to set aside a summary order it is not correct to say that the subject-matter of the suit is the summary order itself. Such suits contemplate the adjudication of title and are not mere appeals from the summary orders. Hence it cannot be said as a rule that such suits are incapable of valuation. Under the new Madras Court-fees Act such suits are divided into two categories—those capable of valuation and those which are not so capable. Incidental reliefs such as injunction or possession will not alter the character of the suit so long as the subject-matter of the suit has a market value. The subject-matter of such suits should be held to be what the summary orders were concerned with *viz.*, the immoveable property and Court-fee has to be paid on the proportionate market-value as laid down in section 41 (2) of the Act.

Messrs. Pais, Lobo and Alvares, for Petitioner.

The Government Pleader (*K. Veeraswami*) and *K. Vaitheeswaran*, for Respondent.

R.M. ——— *Petition dismissed.*

Ramaswami, J.
3rd *August*, 1959.

Rangammal, *In re.*
Crl. R.C. Nos. 1090 and 1091 of 1958.
Crl. R. Pet. Nos. 1043 and 1044 of 1958.
Cr.R.P. No. 299 of 1959.

Criminal Procedure Code (*V of* 1898), *section* 146 (*f*) (*d*)—*Finding of Civil Court in a reference under—If could be appealed against independently.*

Section 146(1) (*d*) of the Code of Criminal Procedure lays down that no appeal, revision or review shall lie from any finding of a civil Court given in a reference under section 146 of the Code, the reason being that the finding of the Civil Court gets merged in the decision of the magistrate and all the grounds that can be urged against the findings can be urged in the proceedings against the final decision.

S. Mohan Kumaramangalam and *K.V. Sankaran*, for Petitioner in Cr.R.P. No. 299 of 1959 and Cr.R.C. No. 1090 of 1958.

Public Prosecutor (*P. S. Kailasam*), for in Cr.R.C. Nos. 1090 and 1091 of 1958.

K. Narayanaswami and *T. S. Ramaswami*, for Respondent in Cr.R.P. No. 299 of 1959 and Respondent in Cr.R.C. Nos. 1090 and 1091 of 1958.

R.M. ——— *Petition dismissed.*

Rajamannar, C.J., and Ganapatia Pillai, J.
5th *August*, 1959.

Velusamy Thevar *v.* Raja Nadar.
A.A.O. No. 49 of 1959.

Representation of the People Act (*XLVIII of* 1951), *sections* 7 (*d*), 33 (5) *and* 36 (4) —*Defects in certified copy of electoral roll—If a ground for rejection of nominations paper—Object of provision—Any service undertaken by the appropriate Government—Undergoing training in Basic Training school—If a disqualification.*

The object of section 33 (5) of the Representation of the People Act is that there should be evidence that the candidate in question is an elector of a different constituency. If that fact is reasonably clear any defect in the certified copy of the electoral roll filed, even if it is a defect consisting of an interpolation or scoring off any part the copy will not amount to a defect of a substantial character to warrant the rejection of a nomination paper. Undergoing training in a Basic Training School conducted by the Government is not a disqualification within the meaning of section 7 (*d*) of the Act.

K. S. Desikan and *K. Raman*, for Appellant.

T. Martin, for Respondent.

R.M. ——— *Appeal dismissed.*

Balakrishna Ayyar, J.
11th August, 1959.

Govindarajan *v.*
Regional Inspector, M.C. and L.B., Vellore.
W.P. No. 6 of 1959.

Madras Village Panchayats Act (*X of* 1950), *section* 11—'*Election*'—*Meaning of.*

A number of processes are involved in an election and the word 'Election' has to be interpreted according to the context in which it appears. The word ' election in sub-section (2) of section 11 of the Madras Village Panchayats Act would include not merely the stage or process of polling but also the process of nomination and the sub-section relating to filling of vacancy would apply in all cases where no person is elected whatever be the reason therefor. The sub-section would take effect in every case where the authorities have done everything necessary to hold an election and no person is elected either due to want of nomination, no votes being polled or all the votes polled being invalid.

S. Mohan Kumaramangalam, K. V. Sankaran and *S. Sethuratnam,* for Petitioner.

The Additional Government Pleader (*M. M. Ismail*), *T. R. Srinivasan* and *A. C. Muniswami Reddi,* for Respondent.

R.M. — *Petition allowed.*

Somasundaram, J.
12th August, 1959.

Public Prosecutor *v.*
Rangaswami.
Cr. Appeal No. 478 of 1958.

Prevention of Food Adulteration Act (*XXXVII of* 1954), *section* 10 (7)—*Duty of Inspector under—Object and extent of.*

Under section 10 (7) of the Prevention of Food Adulteration Act where a Food Inspector takes any action under it, he shall as far as possible call not less than two persons to be present at the time when such action is taken and take their signatures. This safeguard is provided because of the severity of the sentence sought to be imposed on offenders under the Act. But the Inspector would have complied with the procedure prescribed under the section if he has called two independent witnesses. He cannot compel the witnesses nor need he desist from taking samples if the witnesses refuse to come. It is his duty to call witnesses and if they do not come to attest there is no obligation on him to call any further witness.

The Public Prosecutor (*P. S. Kailasam*), for Appellant.

C. K. Venkatanarasimhan, for Respondent.

R.M. — *Appeal dismissed.*

Ananthanarayanan, J.
19th August, 1959.

Krishna Iyer *v.*
Health Officer, Pudukottai Municipality.
Crl. R.C. No. 50 of 1959.
(Crl. R.P. No. 50 of 1959.)

Prevention of Food Adulteration Act (*XXXVII of* 1954), *section* 16 (1) *and rule* 49 (2)—*Keeping chilly paste in an imperfectly tinned container in a hotel—If an offence.*

Though the language of rule 49 (2) of the Prevention of Food Adulteration Rules is not very happy, still having regard to the context and the broad purpose of the legislation the rule will apply to any food or ingredient of food which is ultimately intended for sale whether directly as such or as part of some other food prepared with it. Hence where chilly paste is kept in an imperfect container in a hotel, the rule will be attracted as the chilly paste is intended for use in the preparations made in the hotel.

K. S. Varadachari and *S. Krishnamurthi,* for Petitioner.

The Public Prosecutor (*P. S. Kailasam*), for Respondent.

R.M. — *Sentence reduced.*

Ananthanarayanan, J.
20*th August*, 1959.

Adimoola Mudaliar, *In re.*
Crl. R. C. Nos. 37 and 67 of 1959.
(Crl. R. P. Nos. 27 and 67 of 1959.)

Penal Code (*XLV of* 1860), *sections* 378 *and* 425—*Offence under—What amounts to—Compelling a person to pay his lawful dues by witholding his property—If an offence.*

In order to constitute an offence of theft or mischief the necessary criminal intention has to be established. In the absence of such an intention the mere fact that a person removed another's property with a view to compelling the other to pay up his lawful dues, such as rent, etc., will not make him an offender. Forcible removal of property of another may amount to a tort but not a penal offence unless it is accompanied by the intention to cause wrongful loss or obtain wrongful gain.

14 C.W.N. 936 ; A.I.R. 1921 Pat. 390, referred.

K. Kalyanasundaram, for Petitioner.

The Public Prosecutor (*P. S. Kailasam*), for Respondent.

R.M.

Petitions allowed.

Somasundaram, J.
26*th August*, 1959.

Krishnamurthi, *In re.*
Crl. Appeal No. 110 of 1959.

Penal Code (*XLV of* 1860), *section* 161—*Receipt of illegal gratification—Frame of charge under—Need to conform to the requirements of section.*

In a prosecution for an offence under section 161 of the Penal Code it is necessary to prove all the ingredients of the offence as set out in the section. Mere receipt of money by a public servant in order to get a job for another person somewhere would not by itself necessarily be an offence under section 161 of Indian Penal Code. The rendering or attempting to render any service with any public servant should be referred to in the charge and established before an accused could be convicted of an offence under that section.

A. S. Sivakaminathan and *T. R. Gnanasekaran*, for Appellant.

The Public Prosecutor (*P. S. Kailasam*), for the State.

R.M.

Conviction set aside.

Balakrishna Ayyar, J.
21st July, 1959.

Express Newspapers (Private) Ltd. Madurai *v.* Industrial Tribunal, Madras.
W.P. No. 184 of 1959.

Industrial Disputes Act (XIV of 1947)—*Tribunal under—Jurisdiction of in matters relating to dismissal for misconduct.*

In matters of discipline such as the dismissal of a workman for misconduct it is not for the tribunal under the Industrial Disputes Act to take evidence and decide for itself whether the workman in question merited dismissal. All that it could decide is whether there was want of good faith on the part of the management or whether there was any basic error or violation of principles of natural justice. It is impossible in an establishment to define exhaustively all the duties which a particular workman is to do. A compositor in a press will be under an obligation to do the work of 'joining' which is part of his legitimate duties.

M. R. Narayanaswami, for Petitioner.

S. Mohankumaramangalam, K. V. Sankaran and *S. Ramaswami*, for Respondent.

R.M. *Rule absolute.*

Balakrishna Ayyar, J.
27th July, 1959.

P. Orr & Sons (Private) Ltd. *v.* Presiding Officer, Labour Tribunal.
W.P. No. 13 of 1958.

Industrial Disputes Act (XIV of 1947), *sections* 33 *and* 33-*A—Scope of—Dismissal of workmen during the pendency of Conciliation Proceedings—Contravention of the section—If makes the dismissal void—Jurisdiction of tribunal under.*

On the language of the sections and having regard to their scheme it cannot be said that an order passed by a management in contravention of section 33 of the Industrial Disputes Act would be null and void. Far from it the Act provides penalties for such contravention. On a complaint made under section 33-A of the Act it cannot be said that the only jurisdiction of the tribunal is to direct re-instatement of the employees concerned. The Tribunal will have jurisdiction to decide the merits of the dispute as an industrial dispute and make suitable orders as the merits of the case warrant.

A.I.R. 1953 Bom. 133; (1955) S.C.J. 253: (1955) 1 M.L.J. (S.C.) 148; A.I.R. 1958 S.C. 761, followed.

(1954) 1 L.L.J. 635 held not correct.

M. K. Nambiyar, K. K. Venugopal and *S. S. Sivaprakasa*, for Petitioner.

The Additional Government Pleader (*M. M. Ismail*), *S. Mohan Kumaramangalam* and *K. V. Sankaran*, for Respondents.

R.M. *Order quashed.*

Rajagopalan, J.
7th August, 1959.

Jamal Mohammad *v.* Tribunal for Disciplinary Proceedings, Madras.
W.P. Nos. 324 and 666 of 1959.

Madras Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955 *and the Tribunal under—Nature of.*

The Madras Civil Services (Disciplinary Proceedings) Tribunal Rules framed by the Government under Article 309 of the Constitution and other enabling powers though in essence statutory rules, are only rules to regulate conditions of service of civil servants under its administrative control. A breach of such rule by itself with nothing more cannot confer any justiciable right. The Tribunal set up under the rules, despite its composition of judicial officers, is only an administrative tribunal and it is absolutely in the discretion of the Government to refer or not any matter to it. Similarly despite the judicial trappings which characterise the enquiry conducted by the tribunal, its report to the Government cannot be equated to a decision by a

judicial or quasi-judicial tribunal and a writ of *certiorari* or prohibition cannot be issued to set aside such a report.

S. Mohankumaramangalam and *K. V. Sankaran*, for Petitioner.

The Government Pleader (*K. Veeraswami*), for Respondent.

R.M. *Petition dismissed.*

[FULL BENCH].
Somasundaram, Basheer Ahmed and Ramaswami. JJ.
19th August, 1959.

Employees State Insurance Corporation, Madras *v.* Haji Mohd. Ismail Saheb.
Crl. Mis. Petn. No. 821 of 1958.

Criminal Procedure Code (*V of* 1898), *sections* 346 (1) *and* 526 (1)—*Power of High Court to direct trial of cases before Criminal Court not having territorial jurisdiction in respect of particular cases.*

Employees State Insurance Act (XXXIV *of* 1948), *sections* 39 *and* 40—*Contribution by employees—Failure to pay—Offence if committed within the local limits where the Corporation Office is situated—Office of employee outside such local limits—Effect.*

The High Court may, in the circumstances contemplated in clauses (*a*) to (*e*) of section 526 (1) of the Criminal Procedure Code, clothe with jurisdiction any Court, not empowered under sections 177 to 184 of the Code to enquire into any offences and try the same provided that in other respects that Court is competent to inquire into and try such offences.

37 M.L.J. 60 : I.L.R. 42 Mad. 791, followed.

22 M.L.J. 141 : I.L.R. 36 Mad. 387, held not good law.

The section empowers the High Court to confer jurisdiction upon a Court not having local or territorial jurisdiction, to try an offence, if it is otherwise competent to try such offences.

Section 346 (1) of the Code is wide enough to include cases of want of territorial or local jurisdiction in the magistrate concerned.

A.I.R. 1945 Mad. 526, differed.

Apart from the general law that it is the duty of the debtor to seek his creditor and pay the dues, under the scheme of the Employees' State Insurance Act, 1948, it is the duty of the employer to make the contribution due by him at the office of the State Insurance Corporation. A breach of the duty imposed by the Statute would constitute an offence triable by a Court within the local limits of whose jurisdiction the office of the Corporation is situate.

Per *Basheer Ahmed Sayeed, J.*—"A patent distinction exists between the powers exercisable by the High Court under section 24 of the Code of Civil Procedure and the powers exercisable under section 526 (1) of the Code of Criminal Procedure in regard to cases of want of territorial jurisdiction. A reading of section 526 (1) of the Code of Criminal Procedure discloses that the powers of the High Court under it are far wider than that contemplated under section 24 of the Civil Procedure Code. Section 526 (1) (*e*) (i) of the Code specifically vests the High Court with powers to order that any offence may be inquired into or tried by any Court not empowered under sections 177 to 184 of the Code, but in other respects competent to inquire into and try such offences, whenever it is made to appear to the High Court that such order is expedient for the ends of justice or is required by any provisions of the Code or will tend to the general convenience of the parties or witnesses."

The Advoeate-General (*V. K. Tiruvenkatachari*) and The Public Prosecutor (*P. S. Kailasam*), for Petitioners.

T. R. Thyagarajan, P. S. Chinnappa, A. Jagannatha Rao, A. Nagarajan and *A. Viswanathan*, for Respondents.

R.M. *Orders accordingly.*

Rajagopala Ayyangar, J.
19th August, 1959.

Salem-Shevapet Sri Venkateswara Bank, Ltd. *v.* K. K. Krishnan.
W.P. No. 376 of 1957.

Madras Shops and Establishments Act (*XXXVI of* 1947), *section* 41—*Appeal under—Officer if bound to inquire into the merits of the case.*

Section 41 (1) of the Madras Shops and Establishments Act enacts a rule of law, different from the Common Law as to contractual rights of master and servant, which restricts the right of the employer to dispense with the services of an employee only for a reasonable cause and after giving one month's notice. Where the dismissal is effected on the ground of misconduct of the employee the statute insists on the charge of misconduct being held to be proved by satisfactory evidence recorded at an enquiry held for the purpose. It is the duty of the employer to conform to the requirements of the Statute and when once the appellate authority holds that the mandatory provisions of the section have not been complied with it is the duty of that authority to allow the appeal. The appellate authority is not intended to be a forum where an.inquiry into the misconduct of the employee justifying his dismissal could be gone into.

M. K. Nambiyar, K. K. Venugopal and *O. K. Ramalingam*, for Petitioner.

The Additional Government Pleader (*M. M. Ismail*) and *Messrs. Row and Reddy.* for Respondent.

R.M. *Petition dismissed.*

Ganapatia Pillai, J.
21st August, 1959.

Janakamma *v.* Rangaraj.
C.R.P. No. 2068 of 1958.

Madras Buildings (*Lease and Rent Control*) *Act* (*XXV of* 1949), *section* 7-*A* (4) *and Rule* 9 *of the Rules and section* 12—*Power of remand by Appellate Authority—Scope and extent of.*

An order passed under section 7 (*a*) (4) of the Madras Buildings (Lease and Rent Control) Act could not be deemed an *ex parte* order within the scope of rule 9 of the Rules, where the tenant was represented by counsel and the arrears of rent were not paid. In the absence of an appeal against such an order, it is not open to the tenant to file an application to set aside the order on the footing that it was made *ex parte.* The mere fact that an appeal was filed against the order refusing to set aside the alleged *ex parte* order and the appellate Court remanded the matter to the Controller cannot give it any greater validity in law.In such cases acceptance by the other side of the cost awarded by the order of remand cannot make the order valid. An order of eviction passed under section 7-A (4) of the Act is the result of failure to pay the rent before the hearing and such an order has nothing to do with the original default complained of in the main application by the landlord. In an appeal against an order made under section 7-A (4) of the Act the Appellate Authority cannot call for a finding whether the default on which the original petition was based was wilful or not. An order of remand by the Appellate Authority on a point not arising before the Rent Controller is imcompetent.

T. Venkatadri and *K. Natarajan* for Petitioner.

M. R. Vijayarangam for Respondent.

R.M. *Petition allowed.*

Balakrishna Ayyar, J.
7th September, 1959.

Seshadri *v.* Commissioner, Vellore Municipality.
W.P. No. 929 of 1957.

Government servants—Disciplinary proceedings—Duty of the person to submit to an inquiry—Bias as a disqualification—What amounts to.

Government officials who are faced with disciplinary proceedings must present their case to the authority constituted to conduct the enquiry, whatever that authority may be. Boycot and non-co-operation are not methods suited to such inquiries.

Where the inquiring officer is biased against the person against whom charges are framed and where he has pre-determined that the person is guilty of the charges framed, there could be no fair inquiry by him. Merely because the enquiring officer is the head of an office or of a department and is therefore generally responsible for the events that happen in his office it cannot be said that he is disqualified from holding an inquiry into the conduct of his subordinate. But where the responsibility of the officer in the transactions complained of is not merely general but is more intimate and specific than such officer will be disqualified from holding the enquiry.

Messrs. Jan and *San,* for Petitioner.

K. Veeraswami (The Government Pleader), for Respondent.

R.M.

Rule absolute.

Rajamannar, C.J. and Ganapatia Pillai, J.
11th September, 1959.

Buckingham & Carnatic Company, Ltd., Madras *v.* Industrial Tribunal Madras.
W.A. Nos. 49 and 50 of 1959.

Industrial Disputes Act (*XIV of* 1947), *section* 2 (*k*)—*Industrial dispute—Collective disputes by majority of workers—What amounts to—Several units of an establishment—If should be treated as one.*

Though the definition of the term 'industrial dispute' in section 2 (*k*) of the Industrial Disputes Act is very wide it is now well established that only collective disputes and not a mere individual dispute that will fall within the scope of the Act. But even an individual dispute can become an industrial dispute if it is taken up by a union of workers or a number of workmen. In an establishment which employs a large number of workmen having defined work and falling into several groups it is possible that an industrial dispute could arise between the management and a particular group of workmen. It cannot be said in such cases that a majority of the total number of employees in the entire establishment should take up the cause. In establishments which employ several well-defined sections of workmen and has several units, it cannot be said that the entire extablishment should be treated as one unit to decide whether the dispute raised by the workmen in one unit has the backing of a majority or not.

K. Rajah Ayyar, for *M/s. King* and *Partridge,* for Appellants.

S. Mohankumaramangalam and *K. V. Sankaran,* for Respondent.

R.M.

Appeals dismissed.

[SUPREME COURT].

S. J. Imam and *K. N. Wanchoo, JJ.*
15th September, 1959.

Abdul Rehman Mahamad Yusul *v.* Mahamed Haji Ahmed Agbotwala.
Cr.A. No. 174 of 1956.

Criminal Procedure Code (*V of* 1898), *sections* 198 *and* 199—*Scope of provisions.*

"In our opinion the provisions of section 198, Criminal Procedure Code, are mandatory. Even in section 238 of the Code of Criminal Procedure the importance of the provisions of section 198 or section 199 of the Code is emphasised. Clause (3) of this section specifically stated that the provisions of this section do not authorise the conviction of an offence referred to in section 198 or 199 when no complaint has been made as required by these sections. The Presidency Magistrate wrongly framed the charge, as on the record, when in respect of the offence charged there was no complaint filed and the facts as stated in the complaint actually filed did not make out the offence as charged."

E. B. Ghaswala, for Appellant.

C.B. Aggarwala, for Respondent No. 1.

H. J. Umrigar, for State.

G. R.

Appeal allowed.

[SUPREME COURT.]

S. J. Imam and *K. Subbarao, JJ.*
15th September, 1959.

Chimanlal Premchand *v.* State of Bombay.
Cr. A. No. 200 of 1957.

Bombay Agricultural Produce Market Rules (1941), *rule* 65 (1)—*Scope—Dealing in cotton pressed into bales—If contravenes rule* 65.

Cotton, ginned or unginned, continues to be cotton till it loses its identity by some chemical or industrial process. So long as the identity is not lost the fact that it is pressed into bales or packed otherwise does not make it any the less cotton specified in the Schedule to the Act. In this view, the pressed cotton in bales is an agricultural produce as defined in section 2 (1) of the Act, and, threfore, the appellant in doing business in the said produce without licence has contravened rule 65 of the Bombay Agricultural Produce Market Rules.

Purshotam Tricumdas, for Appellant.

H. J. Umrigar, for Respondent.

G.R.

Appeal dismissed.

[SUPREME COURT.]

S. R. Das, C.J., M. Hidayatullah and *K. C. Das Gupta, JJ.*
25th September, 1959.

Satyanarayana Laxminarayan Hegde *v.* Mallikarajun Bhavanappa Tirumale.
C.A. No. 189 of 1955.

Constitution of India (1890), *Article* 227—*Writ of* certiorari—*Error apparent from the face of the record—Test—Civil Procedure Code* (*V of* 1908), *section* 115—*Applicability.*

"The Bombay Revenue Tribunal took the view that the plaintiff-respondent must fail in his application for possession because he had failed to terminate the tenancy by notice before taking proceedings for ejectment. Is the conclusion wrong and if so, is such error apparent on the face of the record? An error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record."

However wider Article 227 of the Constitution may be than the provisions of section 115 of Civil Procedure Code, it is well-established that the High Court cannot in exercising its powers under Article 227 assume appellate powers to correct every mistake of law. If anything it may merely be an erroneous decision which, in the absence of any provision for appeal, cannot be corrected by the High Court in revision under section 115, Civil Procedure Code or under Article 227.

Prushotam Tricumdas and *N. Lal*, for Appellants.

A. V. Viswanatha Sastri and *M.S.K. Sastri*, for Respondent.

G.R.

Appeal allowed.

[SUPREME COURT.]

S. R. Das, C.J., S. K. Das, A. K. Sarkar, K. Subba Rao and *M. Hidayatullah, JJ.*
30th September, 1959.

Gurnej Singh *v.* Pratap Singh Kairon.
C.A. No. 324 of 1959.

Representation of the People Act (XLIII of 1951), *sections* 123(7) *and* 123 (8)—*Village Officers—Lambardar.*

The Court rejected the contention that Lambardar was both Revenue Officer and Village Accountant.

After scrutinizing the various provisions of the Punjab Land Revenue Act and the Rules *held* that there was a clear distinction between the village headman and a patwari and that Parliament had enacted section 123 (8) of the Representation of the People Act, 1951, with that distinction in view. Under this section it was observed as it originally stood, obtaining assistance from any person serving under the Government was a corrupt practice. But then came the amendment in 1956 and, when Parliament, with the knowledge of the clear distinction between the two categories of officers, expressly included the one within the definition of revenue officers and excluded the other village officers from it, it would be unreasonable to construe the clause in such a way as to include the village headmen in the category of village accountants.

N. C. Chatterjee, for Appellant.

G. S. Pathak, for Respondent.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

S. R. Das, C.J. and *K. Subba Rao.*
30th September, 1959.

K. L. Borkar *v.* Devrao Laxman Anande.
C.A. No. 455 of 1958.

Representation of the People Act (XLIII of 1951), *section* 101—*Scope.*

"The question of throwing away of votes, cannot arise in the absence of special pleadings that the particular voter had cast the vote with the knowledge that they were voting in favour of a disqualified person."

" The ballot papers not rejected under rule 57 were to be deemed as valid and counted as such. In the instant case, if the votes secured by the respondent are valid votes then the appellant had not secured majority of valid votes. As the appellant had produced no evidence before the tribunal in support of his allegation that the voters had cast their votes for the respondent with the full knowledge that they were voting for the disqualfied candidate the votes so cast could not be deemed to have been thrown away within the meaning of the Act."

N. Lall, for Appellant.

Nemo, for Respondent.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

S. K. Das, A.K. Sarkar and *M. Hidayatullah, JJ.*
6th October, 1959.

Romesh Chand Arora *v.* State.
Cr.A. No. 70 of 1957.

Criminal Procedure Code (V of 1898), *section* 526—*Scope—Powers of the High Court to transfer a case to itself.*

"In exercising its revisional powers a High Court upon having the records of a criminal proceeding brought to its notice on an appeal from the conviction can call upon the appellant to show cause why the sentence should not be enhanced, and having heard and dismissed the appeal, can forthwith enhance the sentence under its revisional power.

The High Court had not acted illegally in transferring the case to its file or in enhancing the sentence after hearing the accused.

A departure from the usual practice of allowing the appeal to be decided by the Court of Sessions before exercising revisional powers should not be encouraged."

Y. Kumar, for Appellant.

R. H. Debhar, for Respondent.

G.R. *Appeal dismissed.*

[SUPREME COURT]

B. P. Sinha, P. B. Gajendragadkar and *K. Subba Rao.*
14th October, 1959.

Indian General Navigation & Rly. Co., Ltd. *v.* Their Workmen.
C.A. No. 86 of 1958.

Industrial Disputes Act (XIV of 1947)—Illegal strike cannot be justified.

"It is a little difficult to understand how a strike in respect of a public utility service which is clearly illegal, could at the same time be characterized as perfectly justified. These two conclusions cannot in law co-exist.

The tendency to condone what has been declared to be illegal by statute must be deprecated and it must be clearly understood by those who take part in an illegal strike that thereby they make themselves liable to be dealt with by their employers. There may be reasons for distinguishing the case of those who may have acted as mere dumb driven cattle from those who have taken an active part in fomenting the trouble and instigating workmen to join such a strike, or have taken recourse to violence."

M. C. Settalvad (Attorney-General of India), for Appellant.

Hiharundu Dutt Mazumdar, for Respondent.

G.R. *Appeal partly allowed.*

[SUPREME COURT.]

B. P. Sinha, P. B. Gajendragadkar and *K. N. Wanchoo, JJ.*
16th October, 1959.

Indian Bank Ltd. & others *v.* Its Workmen.
C.A. Nos. 63 and 64 of 1957 and C.A. No. 90 of 1958 and C.A. No. 169 of 1958.

Industrial Disputes Act (XIV of 1947), section 25-F—Gratuity.

The principal question in the three appeals was whether a scheme of gratuity can be framed by Industrial Tribunals for workmen who are entitled to the benefits of section 25-F of the Industrial Disputes Act. The question was also raised in the form whether workmen were entitled to the double benefit of a gratuity as well as compensation on retrenchment.

In dealing with this question it is important to bear in mind the true character of gratuity as distinguished from retrenchment compensation. Gratuity is a kind of retirement benefit like the provident fund or pension. On the other hand retrenchment compensation is not a retirement benefit at all. As the expression retrenchment compensation indicates it is compensation paid to workman on his retirement

and it is intended to give him some relief and to soften the rigour of hardship which retrenchment inevitably causes. It was impossible to say that the grant of any one kind of benefit under law or otherwise excludes the claim for the grant of any other benefit.

M. S. K. Shastri, for Appellants in C.A. Nos. 63 and 64 of 1957.

C. K. Daphtary, Solicitor-General of India, for Appellants in C.A. Nos. 90 and 169 of 1958.

S. Gupta and *M. K. Ramamurti*, for Respondents in C.A. Nos. 63 and 64 of 1957.

Y. Kumar, for Respondent in C.A. No. 90 of 1958.

Phacke, for Respondent in C. A. No. 169 of 1958.

G.R.

Appeals dismissed.

[SUPREME COURT.]

B. P. Sinha, P.B. Gajendragadkar and *K. N. Wanchoo, JJ.*
16th October, 1959.

Brahmachari Research Institute *v.* Its Workmen.
C.A. No. 4 of 1958.

Industrial Disputes Act (XIV of 1947), *section* 25-*F—Scope.*

Where the employer had paid compensation on retrenchment the workmen were not entitled to anything further under the award.

B. Sen, for Appellants.

Sukumar Ghosh, for Respondents.

G.R.

Appeal allowed.

[SUPREME COURT.]

B. P. Sinha, P. B. Gajendragadkar and *K. N. Wanchoo, JJ.*
16th October, 1959.

Dunlops *v.* Its Workmen.
C.A. Nos. 159 and 160 of 1959.

Industrial Disputes Act (XIV of 1947)—*All India Concern—Uniform Scheme.*

It would be advisable to have uniform conditions of service in an all India concern, but industrial adjudication in this country is based on what is known as the industry-cum-region basis and cases may arise where it may be necessary in following this principle to make changes even where the conditions of service of an All India Concern are uniform. If the Tribunal felt that the conditions of service were unfair it would be its duty to alter them irrespective of the fact that the demand is made by only a small minority of the workmen employed in one place out of the many in places where the concern carries on business.

N. Palkhiwala, for Appellant.

K. L. Hathi, for Respondents.

G.R.

Appeal dismissed.

Rajagopalan and *Ramachandra Ayyar, JJ.*
5th August, 1959.

Mohd. Abdul Khader *v.*
Muthia Chettiar.
Appeal No. 387 of 1955.

Words and Phrases—' Advance '—If and when a loan.

Interpretation of Deeds—Legal maxim—' Expressio unis est exclusio alterius *'—Applicability—Advance—If loan.*

An ' advance ' means literally a payment before hand. In certain cases it may be a loan but not necessarily so. Where an advance is declared to be re-payable though only conditionally, it would lean to the side of a loan.

In interpreting deeds the applicability of the maxim *expressio unis est exclusio alterius* is not an absolute one and its application depends on the intention of the parties as discoverable upon the face of the instrument. The maxim ought not to be applied when its application, having regard to the subject-matter to which it is sought to be applied, would lead to inconsistency or injustice.

Where a certain sum of money was advanced by one party to another under an agreement that the same should be recouped in a certain manner, *viz.*, by the distribution of a film for a specific perid, and it is also clear that the advance is to be repaid in any event it cannot be contended that if the proceeds of the film distribution was not sufficient to recoup the advance the same could not be recovered otherwise from the party liable. The clause relating to recoupment by the distribution of the film provides only an additional right of lien or set off and cannot be held to exclude the obligation to repay the advance or such portion of it as remained unpaid after the period of contract is over.

R. Ramamurthy Ayyar and *A. R. Krishnaswami*, for Appellant.

K. Rajah Ayyar and *K. S. Ramamurthi*, for Respondent.

R.M. *Appeal allowed.*

Basheer Ahmad Sayeed and *Ramaswami, JJ.*
4th September, 1959.

The State of Madras *v.*
Kamaksha Pillai.
S.A. No. 633 of 1957.

Madras Estates (Abolition and Conversion into Ryotwari) Act (XXVI of 1948), *section* 3 (*b*)*—Scope of—Notification and acquisition of estate—Effect of—Rights of fishery enjoyed in tank in poramboke situated in estate from a long time—If vest in Government—Right of persons enjoying such rights to declaration from Civil Court—Appropriate remedy—Madras Land Encroachment Act (III of* 1905)*—Applicability.*

The provisions of section 3 (*b*) of Madras Act (XXVI of 1948) are specific, unqualified and unreserved, namely, that the entire estate including poromboke, tanks, fisheries, shall stand transferred to the Government and vest in the Government. There is no provision in the Act which enables persons who had been enjoying rights of fishery for a long time in a tank in a poramboke, situate in an estate notified and taken over under the Act, to apply for a patta for the fishery rights, and they cannot get any benefit by way of compensation or otherwise, when the rights claimed are not the creation of the landholder. Nor has the Madras Land Encroachment Act (III of 1905) any application whatever, so as to entitle the claimants to a declaration of such rights by a civil Court. The only possible remedy is a petition to the Board of Revenue under the Board's Standing Orders, the tract having became ryotwari after the acquisition under Act XXVI of 1948.

Section 2 of the Madras Land Encroachment Act declares, subject to the saving clause, that the Government is the owner of certain kinds of properties, which are defined as those which are not the property of anyone else and which are enumerated in the section. The saving clause declares that the Act does not affect pre-existing rights therein and does not supersede the rights of riparian owners. It is not a vesting declaration but only a property declaration with reference to unappropriated properties existing in 1905 and the declaratory Act exhausts itself with this declaration. Any subsequent acquisitions or extinctions of rights would not be under the Act but would be under other statutes and the Common Law of the land.

I.L.R. 37 Mad. 364 : I.L.R. 23 M.L.J. 109; I.L.R. 40 Mad. 886 : 33 M.L.J. 154 : L.R. 44 I.A. 166 (P.C.) ; I.L.R. 41 Mad. 840 : 35 M.L.J. 159 (F.B.) ; I.L.R. 42 Mad. 239 ; I.L.R. 49 Mad. 249 : 50 M.L.J. 391 : L.R. 53 I.A. 64 (P.C.) ; 33 M.L.J. 415 ; (1938) 2 M.L.J. 434 ; A.I.R 1937 Mad. 292, relied on.

What vests in the Government under section 3 of Madras Act XXVI of 1948 is the entire estate and the entire estate would certainly comprise the tank and the right to fish in the tank, which is immoveable property.

(1955) 2 S.C.R. 907 : 1956 S.C.J. 89 : (1956) 1 M.L.J. (S.C.) 63 : (1956) An.W.R. (S.C.) 63 ; (1955) 1 M.L.J. 264 ; (1957) 2 M.L.T. 244 ; (1959) 1 M.L.J. 185 ; (1959) 1 M.L.J. 195 ; (1958) 1 An.W.R. 420 referred.

Fisheries are in their nature mere profits of the soil over which the water flows and the title to a fishery arises from the right to the soil, though, in certain circumstances, in regard to private fisheries, the fishery may be severed from the soil. Even in such a case, the rights of fishery, which are customary rights would vest in the Government under section 3 (*b*) of Act XXVI of 1948.

Case-law reviewed.

The Advocate-General (*V. K. Tiruvenkatachari*) and The Government Pleader (*K. Veeraswami*) for Appellant.

G. R. Jagadisan, for Respondents.

P.R.N. *Appeal allowed ; decree reversed.*

Balakrishna Ayyar, J. The Hindu *v.* Labour Court, Madras.
10th August, 1959. W.P. Nos. 892 and 893 of 1958.

Industrial Employment Standing Orders Act (XX of 1946), *Schedule—Model Standing Orders under—Standing Order No.* 13—*Termination of employment—What amounts to.*

'Termination of employment,' as distinguished from 'termination of service', of a workman may be brought about in various ways such as death or incapacity of the workman, bankruptcy or closure of the establishment, abandonment of service by the workman and so on. It may be open to the parties concerned to include in the Standing Orders matters which are outside the Schedule to the Industrial Employment (Standing Orders) Act. This Schedule insists on a provision being made in respect of matters enumerated therein. The term 'termination of employment' in Clause 13 of the Model Standing Orders is different from 'termination of service' and would include cases of retirement on attaining the age of superannuation. It is open to the Certifying Officer or the Labour Court on appeal to go into the question of the reasonableness of any provision as to retirement in any Standing Orders as it would be a matter within the scope of the Schedule to the Act and the Model Standing Orders. In considering whether the age of retirement or superannuation should be raised the liability of the employer to meet the additional commitments that would be involved is a relevant factor.

R. Ramamurthi Ayyar and *K. Soundararajan*, for Petitioner.

The Additional Government Pleader (*M. M. Ismail*), *R. Gopalan* and *B. R. Dolia*, for Respondents.

R.M. ——— *Orders accordingly.*

Balakrishna Ayyar, J. Venkatarama Iyer *v.*
11th August, 1959. Panchayat of Kadayanallur Village.
W.P. No. 192 of 1959.

Madras Village Panchayats Act (X of 1950), *section* 25 (3)—*Applicability.*

Sub-section (3) of section 25 of the Madras Village Panchayats Act which enables the election authority to appoint a President, could apply only when in a panchayat which is existing and functioning a situation arises in which both the President and the Vice-President of the Panchayat have ceased to be able to function. It cannot apply to a case where a panchayat is yet to be constituted.

(1957) 2 An.W.R. 176, referred.

An Election Authority has no jurisdiction to evolve its own procedure or substitute its discretion for the Rules which the Goverment have got to frame.

S. Mohan Kumaramangalam, K. Hariharan and *K. Subramaniam,* for Petitioner.

The Additional Government Pleader (*M. M. Ismail*) *K. Veeraswami* and *G. Ramanujan* and *T. R. Mani,* for Respondents.

R.M. ——— *Petition allowed.*

Rajagopalan, J. Nazarath Sayed Etc. Trust *v.* Ibrahim Sahib.
14th August. 1959. C.R.P. No. 1362 of 1957.

Madras City Tenants' Protection Act (III of 1922), *section* 10—*Applicability.*

Section 10 of the Madras City Tenants' Protection Act will apply even to cases of composite decrees which provide not only for ejectment but for other terms and conditions of the lease itself and where the provision as to ejectment is provided for only at a future date.

S. Kothandarama Nainar, for Petitioner.

G. R. Jagadisan, for Respondent.

R.M. *Petition dismissed.*

Somasundaram, J. Thavasiyanan Servai *v.* Alagiriswami Chettiar.
21st August, 1959. S.A. No. 1037 of 1957.

Madras Agriculturists' Relief Act (IV of 1938), *section* 9-*A—Applicability to anomalous mortgages.*

Obiter :—The omission of the term "usufructuary mortgage" in section 9-A of the Madras Agriculturists' Relief Act, 1938, by the amendment in 1950, should mean that the section will apply to anomalous mortgages as well where possession of the property is given to the mortgagee and not only to usufructuary mortgages in the strict sense.

(1956) 2 M.L.J. 46, doubted.

K. S. Champakesa Ayyangar and *K. C. Srinivasan*, for Appellant.

A. Sundaram Ayyar and *P. Balasubramaniam*, for Respondent.

R.M. *Appeal dismissed. Leave granted.*

Balakrishna Ayyar, J. Anantharaman *v.* State of Madras.
25*th August,* 1959. W.P. No. 126 of 1959.

Fundamental Rules, rule 54—*Enquiry against Govrnment servant dropped—If amounts to full exoneration—Right to pay and allowances, etc.—Rule as to.*

The words "fully exonerated' in sub-rule (2) of rule 54 of the Fundamental Rules is used in the sense that the Government servant concerned has been found to have no blame whatsoever attached to him. It is only in such cases that he can avail himself of the benefit of sub-rule (4) and claim that the period of absence from duty should be treated as period of duty for all purposes. Every other case, such as cases where the Government servant concerned is given the benefit of the doubt or where though acquitted, some suspicion attaches to him, falling under sub-rule (3) of the said Rule he can get his pay and allowances only under sub-rule (5). In other words, where an officer is honourably acquitted he would get the benefit of sub-rules (2) and (4) of rule 54 and in all other cases sub-rules (3) and (5) of the Rule will apply.

K. Parasaran, for Petitioner.

The Additional Government Pleader (*M. M. Ismail*), for Respondent.

R.M. *Petition dismissed.*

Rajagopalan and Ramachandra Ayyar, JJ. Kuppanna Gounder *v.* Perumal Gounder.
26*th August,* 1959. Appeals Nos. 286 and 376 of 1955.

Hindu Law—Surrender by widow—Validity of—Tests.

It is now well-settled that a surrender by a Hindu widow of her estate in order to be valid as such should be a *bona fide* one of the entirety of the estate in favour of the nearest reversioner or body of reversioners. Where a surrender is followed by a gift to the widow's nominee it is possible to conceive of three classes of cases, *viz.*, (*a*) where the surrender and the subsequent gift are independent transactions ; (*b*) where the surrender and the gift are parts of the same transaction and the reversioner making a gift of a portion of the estate surrendered in favour of a nominee of the widow; and (*c*) where the surrender and the gift are parts of the same transaction, but the gift is of such a small or reasonable portion of the estate surrendered and the gift itself is to a temple or charity or a relation of the family.

Whether an arrangement under which a portion of the property surrendered is given to a person who is not a stranger to the family at the instance of a widow, would be held to be a device to divide the estate between the reversioner and the widow's nominee, cannot be decided on the basis of the relationship which the nominee of the widow bears to the family of the reversioners. The real test will be whether the surrender is of the entire estate or whether under the guise of a surrender a portion of

the property is diverted from the reversioners to a person who is not a reversioner and an element of transfer would be involved in the transaction, in which case it could not be a valid surrender.

A.I.R. 1955 Andhra Pra. 232, followed.

(1953) 1 M.L.J. 167, observations held too wide.

(Case-law reviewed and discussed-principles stated).

Appeal No. 286 *of* 1955.

The Advocate-General (*V. K. Tiruvenkatachari*) and *G. R. Jagadisan*, for Appelants.

T. M. Krishnaswami Ayyar, A. Balasubramaniam, S. Mohan Kumaramangalam and *K. V. Sankaran*, for Respondents.

Appeal No. 376 *of* 1955.

S. Mohan Kumaramangalam and *S. Gopalaratnam*, for Appellants.

A. Balasubramanyam, for Respondents.

R.M. ——— *Appeal dismissed.*

Balakrishna Ayyar, J.
1*st Septembr*, 1959.

Standard Vaccuum Oil Co., Madras *v.* Commissioner of Labour, Madras.
W.P. Nos. 521 and 573 of 1959.

Madras Shops and Establishments Act (*XXXV of* 1947), *sections* 41 *and* 51—*Jurisdiction of Commissioner under —Scope of—Persons protected under the Act.*

The Madras Shops and Establishments Act applies to all classes of persons employed except those who are expressly excluded from its scope under section 4 (1) of the Act, whether the persons employed receive 'wages' or 'salaries' for the services.

Section 4 (1) (*a*) of the Act excludes persons in a position of management from the scope of the Act. But what constitutes position of management is not explained in the Act. In order to be in a position of management it is not necessary that the person should be at the top of the hierarchy or that he should have absolute powers or that he should be in sole charge of a territory or branch or department or that he should have a right to lay down policies. Powers of appointment or dismissal of other employees or the power to grant leave, etc., are not also conclusive. If an individual has officers subordinate to him, whose work he has to supervise and who has to take decisions and also the responsibility for ensuring that matters entrusted to his charge are efficiently conducted in any ascertainable area or section of work assigned to him, he will be in the position of management.

Whether a person is in a position of management or not is mostly a question of fact and the Tribunals under the Act have jurisdiction to deicide that question so long as the person concerned is a person employed entitled to the protection of the Act. Section 51 of the Act vests the jurisdiction in the Commissioner to decide the question whether any of the provisions of the Act would apply to a person employed in any establishment. Unless there is a manifest error apparent on the face of the record the decision of the Commissioner cannot be interfered with by the High Court under Article 226 of the Constitution merely because the High Court is inclined to take a viw different from that of the Commissioner.

S. Govind Swaminathan and *S. S. Sivaprakasa*, for Petitioner.

The Additional Government Pleader (*M. M. Ismail*) and *K. K. Venugopal*, for Respondent.

R.M. ——— *Petition dismissed.*

Balakrishna Ayyar, J. Sanadanaswami *v.* Ponnuswami.
1st September, 1959. W.P. No. 994 of 1956.

Industrial Disputes Act (XIV of 1947), *section* 33-*A—Scope of.*

Section 33-A of the Industrial Disputes Act does not prohibit every alteration in the conditions of service of a workman during the pendency of proceedings before a Labour Court or Tribunal. What is prohibited is the alteration of the conditions of service in regard to any matter connected with the dispute. Thus there must be some point of connection between the pending dispute and the act of the employer in respect of which a complaint may be made under section 33-A. Where the question referred to the Labour Court was a general one regarding the level of wages in a particular class of industry, retrenchment of individual worker in any particular establishment engaged in such industry, during the pendency of such a reference cannot amount to a contravention of section 33-A of the Act and the Labour Court could not get any jurisdiction under it.

T. S. Kuppuswami Ayyar, for Petitioner.

R. Sundaralingam, for Respondent.

R.M. *Order quashed.*

Rajagopala Ayyangar, J. Panchapakesa Iyer *v.* Subramania Moopan.
2nd September, 1959. W.P. No. 57 of 1957.

Madras Cultivating Tenants' Protection Act (XXV of 1955), *section* 4 (1) *and* (2)—*Applicability.*

Restoration to possession of a cultivating tenant under section 4 (1) of the Madras Cultivating Tenants' Protection Act will be barred only if such restoration is not possible as a result of another tenant being in *bona fide* possession of the land and who does not fall within the terms of the proviso. Where some other tenant enters into possession of the land but surrenders possession and clears out before the application by the former tenant for restoration to possession there is no bar to an application under section 4 (1) of the Act.

A. V. Narayanaswami Ayyar and *R. Venkatachalam,* for Petitioner.

The Additional Government Pleader *(M. M. Ismail),* for Respondent.

R.M. *Petition dismissed.*

Rajamannar, C.J. and Ganapathia Pillai, J. Thalai Vadivu *v.*
4th September, 1959. Venugopala Chettiar.
L.P.A. No. 38 of 1955.

Madras Buildings (Lease and Rent Control) Act (XXVI of 1957), *section* 7—*Applicability to decrees in ejectment made before the Act.*

It is not correct to say that section 7 of the Madras Buildings (Lease and Rent Control) Act would apply only to cases of decrees in ejectment passed after the coming into force of the Act. The section prohibits eviction of tenants in execution of decrees whether the same is made before or after the Act and whether the decree is based on a compromise or after contest. Where an execution petition is filed after the coming into force of the Act the tenant could invoke the protection under section 7.

A. V. Narayanaswami Ayyar, S. Amudachari and *A. V. Raghavan,* for Appellant.

T. R. Srinivasan, for Respondent.

R.M. *Appeal dismissed.*

[SUPREME COURT.]

S. J. Imam, J. L. Kapur, A. K. Sarkar and K. N. Wanchoo, JJ.
27th October, 1959.

N. R. Ghosh *v.* State of W.B.
Crl. A. No. 116 of 1957.

Criminal Procedure Code (V of 1898), *section* 403—*West Bengal Criminal Law (Amendment) Act,* 1949, *section* 4—*Constritutional validity.*

By Majority : Held that it was within the power of the High Court to review its judgment in earlier cases. It was further held that in view of its previous judgment upholding the validity of the Criminal Law (Amendment) Act the trial of the appellant by the Special Judge was by a competent Court. The order of acquittal in favour of the appellant was a proper order and was a bar to his re-trial.

Sukumar Ghosh, for Appellant.

H. R. Khana, for Respondent.

G.R. *Appeal allowed.*

[SUPREME COURT.]

B. P. Sinha, S. J. Imam, J. L. Kapur, K. N. Wanchoo and K. C. Das Gupta, JJ.
28th October, 1959.

Satwant Singh *v.* The State of Punjab.
Crl.A. Nos. 100-105 and 124-129 of 1954 and Petition No. 31 of 1952.

Criminal Procedure Code (V of 1898), *section* 197—*Applicability—Penal Code (XLV of* 1860), *section* 420—*Ordinary fine, compulsory fine—Sentence.*

Section 197 of Criminal Procedure Code did not apply to the facts of the case as the offence of abetment of cheating by the accused could not be regarded as an offence committed by him while acting or purporting to act in the discharge of his official duty.

" The measure of punishment must be commensurate with the nature and the seriousness of the crime. The appellant had cheated the Government of Burma to the extent of something like Rs. 7 lakhs. It is impossible to say that the sentence of imprisonment as reduced by the High Court was in any way excessive."

Harnam Singh, for Respondent

C. K. Daphtary, Solicitor-General of India, for Appellant.

G.R. *Satwant Singh's appeal and Petitions dismissed and appeals by State of Punjab allowed.*

Ananthanarayanan, J.
20th August, 1959.

Muniammal *v.* Pagadala Guryvayya.
A.A.O. No. 142 of 1958.

Practice—Appointment of Receiver in a simple mortgage suit—When could be done.

Mortgages—Suit by a simple mortgagee—Receiver—If could be appointed to collect rents of the mortgaged properties.

Civil Procedure Code (V of 1908), *Order* 40, *rule* 1—*Appointment of Receiver—Considerations in case of suit of simple mortgagee.*

In a suit by a simple mortgagee a Court has jurisdiction to order the appointment of a Receiver for collecting the rents and profits of the property subject to the simple mortgage, provided proper cause is shown and the relevant circumstances justify the appointment of a Receiver.

56 Mad. 915, followed.

A.I.R. 1947 All. 157, differed.

T. Venkatadri and *T. R. Ramachandran*, for Appellant.

K. Sanjeevi Naidu, *K. Kumaraswami* and *N. R. Raghavachari*, for Respondent.

R.M. *Appeal allowed.*

Rajagopalan and Ramachandra Ayyar, JJ.
18th September, 1959.

State of Madras *v.* Asher Textiles, Ltd.*
T.R.C. Nos. 183 and 184 of 1956.

Madras General Sales Tax Act (IX of 1939), *section* 12-*B—Revisional jurisdiction of the High Court under—Scope and extent of.*

The rule of law that the powers of an appellate Court is co-extensive with those of the original Court is not purely based on statutory provisions. It is an inherent jurisdiction in the appellate Court and subject to any limitation that may be imposed by any statute an appellate Court has jurisdiction to take note of the subsequent change in law after the original Court's decision and mould the relief in accordance therewith. A Court of revision would likewise have all the powers of an appellate Court except that the conditions of interference will be in accordance with the relevant statutory provisions creating the revisional jurisdiction.

The revisional jurisdiction granted under section 12-B of the Madras General Sales Tax Act is wider than the revisional jurisdiction under the Code of Civil Procedure and the High Court has jurisdiction to rectify any error of law in the order of the Appellate Tribunal having regard to the state of law at the time of the disposal of the revision.

The Government Pleader (*K. Veeraswami*), for Petitioner.

K. Rajah Ayyar and *T. V. Balakrishnan*, for Respondent.

R.M. *Petition allowed.*

Somasundaram, J.
18th September, 1959.

Public Prosecutor *v.* Narayanaswami.
Crl. Appeals Nos. 44 and 45 of 1959.

Madras Village Panchayats Act (X of 1950), *sections* 2 (7), 25 (3) *and* 103—'*Executive Authority*'—*If includes a temporary President.*

A temporary President of a panchayat appointed under section 25 (3) of the Madras Village Panchayats Act is as much a 'President of the Panchayat' within the meaning of the Act and as such he is competent to file a complaint under section 103 of the Act.

The Public Prosecutor (*P. S. Kailasam*), for Appellant.

K. Narayanaswami Mudaliar, *R. Rajagopalan* and *T. Ramaswami*, for Respondent.

R.M. *Appeal allowed.*

Ramaswami, J.
24th September, 1959.

Naidu, *In re*.
Crl.R.C. Nos. 1155 and 1156 of 1958.

Motor Vehicles Act (IV of 1939), *section* 42 (1)—*Offence under—When committed—Use or permit the use of any vehicle—If includes mere driving of such vehicle.*

The expression 'use or permit the use of the vehicle' in sub-section (1) of section 42 of the Motor Vehicles Act is not the same thing as driving or being in charge of the vehicle. The scheme of the Act makes a distinction between the user of a motor vehicle and the 'driving' of such a vehicle each of which act is made punishable for certain purposes. In order to constitute a breach of section 42 (1) of the Act, the vehicle, whether stationary or moving, should be found in the course of its user for the purpose for which it is intended at a place which is not authorised by the permit.

The mere fact that a goods vehicle is found going empty in a route not covered by its permit will not be a breach of section 42 (1) of the Act unless it is proved that it was going by that unauthorised route in the course of its user as a goods transport vehicle.

T. Chengalvarayan, for Petitioner.

The Public Prosecutor (*P. S. Kailasam*), for Respondent.

R.M. *Petition allowed.*

Rajamannar, C.J., and Ganapatia Pillai, J.
1st October, 1959.

Chinniah Servai *v.* State of Madras.
W.P. No. 929 of 1959.

Madras Buildings (Lease and Rent Control) Act (XXV of 1949), *section* 13—*Power of exemption under—Scope of.*

Section 13 of the Madras Buildings (Lease and Rent Control) Act does not specify the grounds on which an exemption may be granted by the Government. But it is only when the provisions of the Act do not cover a particular case that there is legitimate scope for the exercise by the Government of the powers conferred by section 13.

There is no provision in the Act under which the owner of a non-residential building could apply for eviction of a tenant of such a building on the ground that he *bona fide* requires it for his residential purpose. Apart from cases of non-residential buildings such as factories, large establishments, etc., which could not be normally considered fit for residential purposes, there may be buildings which may be called non-residential because they were let for non-residential purposes but which could be used for residential purposes as well. There is no provision in the Act under which non-residential buildings of this type could be converted into a residential building, though there is a provision under section 11 (1) of the Act for converting a residential building into a non-residential one. Hence where the justice of any case could not be met by the provisions of the Act there is legitimate scope for the exercise by the Government of the powers conferred under section 13 of the Act.

Case-law reviewed.

R. Gopalaswami Ayyangar and *R. Mathurubutham*, for Petitioner.

The Additional Government Pleader (*M. M. Ismail*), *T. Venkatadri* and *V. M. Jayapandian*, for Respondent.

R.M. *Petition dismissed.*

Ramaswami and Ananthanarayanan, JJ.
13th October, 1959.

Workers, etc., of Express News Papers (Private) Ltd. *v.* Management of Express News Papers (Private) Ltd.
W.A. Nos. 73 and 85 of 1959.

Constitution of India (1950), *Article* 226—*Jurisdiction of Court under—Writ of Prohibition against a Tribunal even at the earliest stage—When could be issued.*

Industrial Disputes Act (*XIV of* 1947), *section* 10 (1) *and* (3)—*Reference under—Jurisdiction of Tribunal to decide whether what is referred is an industrial dispute—Exercise of power under sub-section* (3) *of section* 10—*When justified.*

It is no doubt true that the High Court has jurisdiction under Article 226 of the Constitution of India to issue a writ of prohibition against a Tribunal subordinate to it even at the earliest stage, *viz.*, even before the Tribunal assumes jurisdiction to inquire into any matter, provided it is satisfied that the absence of jurisdiction in the Tribunal is so patent that it would be an abuse of power or injustice to permit the Tribunal to proceed in the matter. It would not however be proper for the Court to substitute itself for the Tribunal and embark upon an elaborate enquiry into controverted question of fact at the earliest stage.

In a reference under section 10 of the Industrial Disputes Act the Tribunal has jurisdiction to decide whether a particular matter referred to it amounts to an industrial dispute or not. Where there is a dispute as to whether the conduct of the employer is a ' closure ' or ' lock-out ' it is for the Tribunal to decide the question on the evidence before it. So long as there are conceivable possibilities that the act may be a lock-out, though it appears to be a closure, it must be a matter for evidence in an inquiry before the Tribunal. It is no doubt true that an employer has a right to close down his business and his motives in doing so cannot be questioned. Both the closure and the motives actuating it are outside the purview of the Industrial Disputes Act. But the mere fact that an employer chooses to call his action as a closure is not conclusive and it is for the Tribunal to decide whether what is claimed as a closure is a real and *bona fide* closure or is merely reprisal lock-out. But where the very fact of lock-out is in dispute and the employer claims to have closed down his business the use of the power under section 10 (3) of the Act by the Government will be erroneous and improper as it would virtually amount to a coercion of the employer to continue his business. Such powers can be used only in cases where both sides agree that a lock-out has occurred as a result of a strike and each party contends that its action is legal and justified.

K. V. Sankaran, for Appellant.

V. Tyagarajan and *M. R. Narayanaswami* and The Additiona Government Pleader (*M. M. Ismail*), for Respondents.

R.M. *Orders accordingly.*

[SUPREME COURT.]

P. B. Gajendragadkar, K. Subba Rao and J. C. Shah, JJ.
28th October, 1959.

Union of India *v.* Amar Singh.
C.A. No. 478 of 1957.

Railways Act (*IX of* 1890), *sections* 72 *and* 80—*Goods despatched from Pakistan—Bailee of the goods—Article* 30 *of the Limitation Act* (*IX of* 1908)—*Onus.*

In the absence of any contract between the two Governments or the Railways, the legal basis on which the conduct of the respondent and the Railways can be sustained is that the respondent delivered the goods to the receiving Railway with an authority to create the Forwarding Railway as his immediate bailee from the point the wagon was put on its rails. The authority in the agent must necessarily be implied to appoint the Forwarding Railway to act for the consignor during that part of the journey of the goods by the Indian Railway ; and if so, by force of that section, the Forwarding Railway would be agent of the consignor.

The burden is upon the defendant who seeks to non-suit the plaintiff on the ground of limitation to establish that the loss occurred beyond one year from the date of the suit.

Cases referred: I.L.R. 3 Mad. 240 ; I.L.R. 5 Bom. 371 ; 7 H.L.C. 194.

Ganpathi Iyer, for Appellant.

Gurbachan Singh, for Respondent.

G. R. ——— *Appeal dismissed.*

[SUPREME COURT.]

P. B. Gajendragadkar, K. Subba Rao and J. C. Shah, JJ.
4th November, 1959.

Bhaskar Waman Joshi *v.* N. R. Aggarwal.
C.A. No. 16 of 1955.

Transfer of Property Act (*IV of* 1882), *section* 58 (*c*), *Proviso—Scope.*

The Proviso to section 58 (*c*) of the Transfer of Property Act was added by Act XX of 1929. Prior to the amendment there was a conflict of decisions on the question whether the condition contained in a separate deed could be taken into account in ascertaining whether a mortgage was intended by the principal deed. The Legislature resolved this conflict by enacting that a transaction shall not be deemed to be a mortgage unless the condition referred to in the clause is embodied in the document which effects or purports to effect the sale. But it does not follow that if the condition is incoporated in the deed effecting or purporting to effect a sale a mortgage transaction must of necessity have been intended. The question whether by the incorporation of such a condition a transaction ostensibly of sale may be regarded as a mortgage is one of intention of the parties to be gathered from the language of the deed interpreted in the light of the surrounding circumstances. The circumstance that the condition is incorporated in the sale-deed must undoubtedly be taken into account, but the value to be attached thereto must vary with the degree of formality attending upon the transaction.

The question in each case is one of determination of the real character of the transaction to be ascertained from the provisions of the deed viewed in the light of surrounding circumstances. If the words are plain and unambiguous they must in the light of the evidence of surrounding circumstances be given their true legal effect. If there is ambiguity in the language employed, the intention may be ascertained from the contents of the deed with extrinsic evidence as may by law be permitted to be adduced to show in what manner the language of the deed was related to existing facts. Oral evidence of intention is not admissible in interpreting the covenants of the deed but evidence to explain or even to contradict the recitals as distinguished from the terms of the documents may of course be given. Evidence of contemporaneous conduct is always admissible as a surrounding circumstance ; but evidence as to subsequent conduct of the parties is inadmissible. L.R. 51 I.A. 305 : 47 M.L.J. 409, referred to

Dr. W. Barlingay, for Appellant.

A. V. Viswanatha Shastri, for Respondent.

G.R. ——— *Appeal dismissed.*

[SUPREME COURT.]

B. P. Sinha, C.J., S. J. Imam, J. L. Kapur, K. N. Wanchoo and K. C. Das Gupta, JJ.
6th November, 1959.

Y. Mahboob Sheriff *v.* Mysore State Transport Authority.
Petitions Nos. 54, 75 and 76 of 1959.

Motor Vehicles Act (IV of 1939), *section* 58 (1) *and* (2)—*Article* 19 (1) (g) *of the Constitution of India—Applicability.*

By Majority.—" One of the incidents which applies to a permit is that the Authority is enjoined by section 58 (1) (*A*) of the Motor Vehicles Act to indicate a period of not less than three years and not more than five years in the permit, so far as its duration is concerned. The same provisions applied to a renewal also under section 58 (2) of the Act."

[The Judgment also directed the Regional Transport Authority, Bangalore, to comply with the requirements of the law as laid down in section 58 (1) (*A*), read with section 58 (2) of the Act, in the order of renewal made by it in favour of petitioners on December 15, 1958.]

J. L. Kapur, J., in his dissenting note, observed " No order commanding the Authority as to what order it should pass and what period should be substituted in place of the order passed by it can be made by this Court. All that this Court can do is to quash the order and leave it to the Authority to reconsider the matter and exercise its discretion keeping in view the law as laid down by this Court.

C. K. Daphtary, in all the petitions, for Petitioners.

H. N. Sanyal Additional Solicitor-General, for Respondent No. 3 in Petitions Nos. 54, 75 and 76.

G.R. *Petitions allowed.*

[SUPREME COURT.]

B. P. Sinha, C.J., S. J. Imam, J. L. Kapur, K. N. Wanchoo and K. C. Das Gupta, JJ.
6th November, 1959.

Srinivasa Reddy *v.* State of Mysore.
Petition No. 95 of 1959.

Motor Vehicles Act (IV of 1939), *section* 68-*F—Applicability.*

By Majority.—Under section 68-F of the Motor Vehicles Act the undertaking has to apply for the permits in the manner provided in Chapter IV, even though the R.T.A. may be bound on such application to issue the permits. Thus the undertaking must comply with the terms of sections 45 and 46 when it applies for permits. Under section 57 (2) the undertaking should apply not less than six weeks before the date on which it desired to start the service. This is necessary to give time to the R.T.A. to deal with the matter and, if necessary, to inform those who might be affected under section 68-F (2) to be prepared for the change. That is why section 68-F (1) provided that the application shall be made in a manner provided in Chapter IV.

It is the duty of the undertaking when it prepares a scheme under section 68-C to decide whether it will take up a whole route or portion thereof. If it decides to take a portion of the route (provided, however, conditions of efficiency, adequacy, economy and proper co-ordination are fulfilled) it should specify that portion only in the scheme.

Dissenting from the majority decision *J. L. Kapur, J., held* that it was not the intention of the legislature to put the whole scheme into operation all at once or not at all. " If the State undertaking intends to run a scheme within a reasonable time then there is no reason why the State should not apply for different routes within a reasonable time so long as it acts honestly, fairly and without oblique motives."

C. K. Daphtary, Solicitor-General of India, for Petitioners.

H. N. Sanyal, Additional Solicitor-General of India, for Respondents Nos. 1 and 2.

G.R. *Order accordingly.*

[Supreme Court.]

P. B. Gajendragadkar, K. Subba Rao and J. C. Shah, JJ. *10th November*, 1959.

J. K. Mukherjee *v.* New Beerbhum Coal Co., Ltd. C.A. No. 342 of 1959.

Civil Procedure Code (*V of* 1908), *Order* 21, *rules* 66 *and* 89—*Applicability—Sales by a receiver.*

" In the present appeal we do not propose to consider or decide the general question about the character of the sale held by the receiver nor do we propose to attempt to specify which provisions of Order 21 will apply to such sales and which will not. We are dealing with the narrow question as to whether Order 21, rule 89 applies to such a sale."

" If the provisions of rule 66 of Order 21 are inapplicable to sales held by receivers it is obvious that the second condition prescribed by rule 89 (1) (*b*) is equally inapplicable and it is undoubtedly one of the two essential conditions for the successful prosecution of an application under the said rule. In our opinion this fact clearly emphasises the inapplicability of the whole rule to sales held by receivers. We are, therefore, satisfied that the High Court was right in refusing to entertain the appellant's application under Order 21, rule 89".

H. N. Sanyal, Additional Solicitor-General of India, for Appellant.

S. N. Mukharjee, for Respondent No. 1.

N. C. Chatterjee, for Respondent No. 2.

G.R. ——— *Appeal dismissed.*

[Supreme Court]

P. B. Gajendragadkar, K. Subba Rao and J.C. Shah, JJ. *10th November*, 1959.

Official Liquidator *v.* Rameshwar Nath. C.A. No. 28 of 1958.

Companies Act (*I of* 1956)—*Priority claim by the landlord of the Bank in liquidation.*

In the winding up of the company it was open to the liquidator to disclaim contracts, and till so disclaimed or rescinded the contracts remained operative. Distinction was to be made between the property which remained with the Liquidator for the purposes of liquidation and the one which remained with the Liquidator because he abstained from trying to get rid of it.

The property did not remain with the Liquidators, but " they could not think of any suitable method of getting rid of the premises inspite of their desire to do so."

The debt so incurred was not a debt incurred in connection with expenses for liquidation and was just like any other debt and could not be given any priority.

H. N. Sanyal, Additional Solicitor-General of India, for Appellant.

A. V. Viswanatha Shastri, for Respondent.

G.R. ——— *Appeal allowed.*

[Supreme Court.]

S. K. Das, A. K. Sarkar and M. Hidayatullah, JJ. *10th November*, 1959.

Bharwad Mepa Dana *v.* State of Bombay. Cr. A.No. 72 of 1959.

Penal Code (*XLV of* 1860), *section* 302—*Unlawful assembly—Common object—Test.*

The Court observed that in the present case it had been found by the High Court that there were five or more people constituting the unlawful assembly and that they had a common object and intention to kill the deceased, who were done to death in pursuance of this common object. The Court held that on these findings the High Court was right in upholding the conviction and sentences of the accused.

J. G. Sethi, for Appellant.

H. J. Umrigar, for Respondent.

G.R. ——— *Appeal dismissed.*

Ganapatia Pillai, J.
5th September, 1959.

Janaki Ammal *v.* Krishnaswami Mudaliar.
C.R.P. No. 421 of 1959.

Civil Procedure Code (*V of* 1908), *section* 145 *and Schedule—Appendix G—Form* 3—*Security bond—Enforceability by execution.*

A security bond executed in favour of an officer of Court in the form mentioned in Form 3 of Appendix G of the Schedule to the Code of Civil Procedure is not executed in favour of a particular person either by designation or by name and is not as such assignable. Even if such a case does not come within section 145 of the Code the Court has ample jurisdiction in its inherent powers, to enforce such a bond by way of execution in the same proceedings to realise the money. There is no necessity to bring a separate suit to enforce the bond.

Vedantham Srinivasan, for Petitioner.

K. S. Champakesa Ayyangar and *K. C. Srinivasan,* for Respondent.

R.M. — *Petition dismissed.*

Ramachandra Iyer, J.
14th September, 1959.

Jeevabhoy Baghat *v.* Life Insurance Corporation of India.
C.R.P. No. 297 of 1959.

Civil Procedure Code (*V of* 1908), *Order* 6, *rule* 17—*Amendment of plaint*—Bona fides *of party—Relevancy.*

The question of amendment of a pleading has to be decided with reference to the provisions of Order 6, rule 17 of the Code of Civil Procedure and not by embarking on an inquiry whether the averments in the original pleadings are true or not. The question of *bona fides* of the party relates only to the amendment sought for, *viz.*, whether there has been any laches or prejudice to the other side and it has no bearing on the truth or falsity of the pleadings.

V. C. Gopalaratnam, V. S. Subramanian and *V. Tyagarajan,* for Petitioner.

R. Narasimhachari and *N. Varadarajan,* for Respondent.

R.M. — *Petition allowed.*

Subramanyam, J.
15th September, 1959.

Vazir Begum Ammal *v.* Seth Tholaram.
Appeal No. 147 of 1956.

Evidence Act (*I of* 1872), *section* 6—*Exception as to exclusion of hearsay evidence—Suit on a promissory note—Proof of signature of a Pardanashin lady—Husband's statement that the signature on the note is his wife's—If admissible in evidence.*

In a suit on a promissory note executed by a Pardanashin lady where it is established by evidence that the promissory note was taken by the husband of the lady inside the house and was brought back after obtaining the signature and the husband stated that the signature on the note was his wife's the statement so made is admissible in evidence to prove the signature of the lady on the promissory note.

P. S. Srisailam, for Appellant.

T. S. Raghavachari, S. Amudachari and *A. V. Raghavan,* for Respondent.

R.M. — *Appeal dismissed.*

Ramachandra Iyer, J.
18th September, 1959.

Mohd. Kasi Moiddin Saheb *v.* Mohambara Naicker.
C.C.C. A. No. 149 of 1955 and C.R.P. No. 464 of 1959.

Madras Cultivating Tenants' Protection Act (*XXV of* 1955), *sections* 6 *and* 6-*A*—*Cumulative effect of—Transfer of suits to Revenue Court—If could be done in case of composite suits—Order of transfer—If revisable by the High Court.*

Section 6 of the Madras Cultivating Tenants' Protection Act bars the jurisdiction of Civil Courts only in respect of any matter which a Revenue Court under the Act is empowered to determine. The jurisdiction of the Revenue Courts under the Act is limited only to cases for recovery of possession and the Revenue Court has no jurisdiction to pass a decree for arrears of rent, etc. Suits of a composite nature

involving reliefs not only as to possession but also other matters like recovery of arrears of rent, etc., could not properly be transferred by a civil Court under section 6-A of the Act. In such cases effect can be given both to section 6 and section 6-A of the Act by the civil Court first disposing of the issues that are outside the scope of the Revenue Court under the Act and then take up the question whether the defendant is a cultivating tenant or not within the meaning of the Act. If it finds that the defendant is a cultivating tenant then the suit should be transferred to the Revenue Court in relation to the relief as to possession or injunction alone. To justify a transfer under section 6-A of the Act there should be a decision by the Civil Court whether the defendant is a cultivating tenant or not and no transfer could be made on a *prima facie* or tentative view of the matter.

(1958) 1 M.L.J. 232 and (1958) 2 M.L.J. 184, differed.

(1957) 2 M.L.J. 628 and (1958) 1 M.L.J. 427, referred.

An order of transfer erroneously made under section 6-A of the Act could be set aside in revision by the High Court.

K. Rajah Ayyar and *T. K. Subramania Pillai*, for Appellant.

A. Nagarajan and *A. Viswanathan*, for Respondent.

R.M. — *Petition allowed.*

Rajagopalan and Ramachandra Iyer, JJ.
23rd September, 1959.

State of Madras *v.* India Coffee Board.
T.R.C. No. 39 of 1956.

Madras General Sales Tax Act (IX of 1939), *section* 12—*Powers of Deputy Commissioner to revise assessment—Scope and extent of—If exists even after orders of assessment are taken up on appeal and revision.*

The scheme and provisions of the Madras General Sales Tax Act, 1939, makes it clear that an order of assessment is treated as a single entity subject to a right of appeal conferred on the tax-payer and a limited right to the State to get errors in assessment revised by the competent authorities. Though the Statute envisages two sets of remedies *viz.*, appeals and revision, the former being available only to the assessee and latter both to the assessee and the State, the order of assessment itself is not treated as a severable one with respect to each item of the total turnover, *viz.*, the part objected to by the assessee or by the State. It is not correct to say that the Act provides two independent hierarchy of tribunals, one to exercise appellate jurisdiction and the other to exercise revisional jurisdiction in the interests of the Revenue, each functioning independent of the other in their respective fields with reference to the same order of assessment.

Hence the jurisdiction of the Deputy Commissioner under section 12 of the Act to revise an order of assessment ends when the Appellate Tribunal has passed an order in respect of that assessment in the exercise of its appellate jurisdiction. Apart from cases of escaped assessment for which separate provision is made under the rules, an order of assessment under the Act is a single and indivisible one capable of being set aside either by appeal or revision. Independent of any theory of merger when once an order of assessement has been the subject-matter of an appeal (even though the right of appeal is conferred only on the assessee and not the States) and the order has been superseded by the order of the Appellate Tribunal, the Deputy Commissioner has no jurisdiction thereafter to exercise his powers of revision under section 12 of the Act. It is all the more clear that such a power could not be exercised when the order of assessment has been the subject-matter of a final adjudication by the High Court in revision.

The Government Pleader (*K. Veeraswami*), for Petitioner.

M. Subbaraya Ayyar, V. Sethuraman and *S. Padmanabhan*, for Respondent.

R.M. — *Petition dismissed.*

Rajagopala Ayyangar, J.
1st October, 1959.

Baluswami Naidu & Sons *v.* State of Madras.
W.P. Nos. 14, 15, etc., of 1958.

Madras General Sales Tax Act (IX of 1939), *sections* 3 (4), 19 (4)—*Validity of rules made under —Formalities to be observed.*

A rule made under the Madras General Sales Tax Act, 1939, prescribing the mode of determination of turnover under section 3 (4) of the Act should conform to the formalities prescribed under section 19 (4) of the Act and also receive the approval of the Legislative Assembly as required by the Proviso to section 3 (4) of the Act.

8 S.T.C. 272 and 9 S.T.C. 215, referred.

Any defect in the validity of the rule due to non-compliance with the formalities prescribed by the Act cannot be cured by the mere fact of publication in the official gazette and the provisions of section 7 of the General Clauses Act can be of no avail

Messrs. Sundararajan and Sivaswami, R. S. Venkatachari, T. T. Srinivasan and *A. N. Rangaswami,* for Petitioners.

The Advocate-General (*V.K. Tiruvenkatachari*) and The Additional Government Pleader (*M. M. Ismail*), for Respondents.

R.M. —————— *Petition allowed.*

Balakrishna Ayyar, J.
23rd October, 1959.

Ponnuswami Gramani *v.* Dt. Collector of Chingleput.
W.P. No. 8 of 1959.

Madras General Sales Tax Act (IX of 1939), *section* 9—*Assessment of tax due by a dissolved partnership—Liability of the partners.*

It is no doubt true that unlike the Income-tax Act, the Madras General Sales Tax Act, 1939 or the rules framed thereunder do not contain a separate provision for assessing the turnover of a dissolved firm which was a dealer as defined by the Act till its dissolution. But on that score the liability of the partners of the dissolved firm to pay the tax due by the firm cannot be avoided. Such arrears could be recovered from the partners even independently of their being in possession of the assets of the dissolved firm.

V. Balasubramanian, for Petitioner.

The Additional Government Pleader (*M. M. Ismail*), for Respondent.

R.M. —————— *Petition dismissed.*

Ramaswami and Ananthanarayanan, JJ.
9th November, 1959.

Express Newspapers, Ltd. *v.* Their Workers & Staff.
S.C.P. Nos. 155 and 156, etc., of 1959.

Constitution of India (1950), *Article* 133 (1) (b) *and* (c)—*Leave to appeal to Supreme Court—Applicability.*

It is no doubt true that even proceedings before the High Court under Article 226 of the Constitution could involve directly or indirectly a claim in respect of property of the monetary value laid down in Article 133 (1) (*b*) of the Constitution. In cases where such proceedings do not involve such a claim they may fall under clause (*c*) of the said Article. But before a Court can grant a certificate under clause (*c*) of Article 133 (1) it must be convinced that the case involves a question of general importance.

Where the High Court merely directed an Industrial Tribunal to inquire and decide the question whether a particular closing down of an industry amounts to a '*bona fide* closure' or a mere 'lock-out', there is no question of any general importance involved so as to merit a certificate for appeal to Supreme Court under Article 133 (1) (*c*) of the Constitution.

V. Tyagarajan and *M. R. Narayanaswami,* for Petitioner.

K. V. Sankaran and The Additional Government Pleader (*M. M. Ismail*), for Respondents.

R.M. —————— *Petition dismissed.*

[SUPREME COURT].

B.P. Sinha, C.J., P.B. Gajendragadkar, K. Subba Rao, K.C. Das Gupta and J.C. Shah, JJ.
13th November, 1959.

Okara Elec. Supply Co. *v.* State of Punjab.
Petition No. 19 of 1959.

Electricity Act (*IX of* 1910), *sections* 7 *and* 28—*Sanction—If can reserve power to acquire the business—Articles* 14, 19 *and* 31 *of the Constitution.*

In view of the nature of the undertaking it could not be said that Government when granting sanction could not reserve an option to acquire the business. In the present case clause 11 of the sanction reserving such right was not illegal and the order was not void and the action of the Government did not violate any fundamental right of the petitioner.

Veda Vyasa, Senior Advocate, (*S. K. Kapur* and *Ganpat Rai*, Advocates, with him), for the petitioner.

S. M. Sikri, Advocate-General, Punjab and *N. S. Bindra*, Senior Advocate, (*D. Gupta*, Assistant Government Advocate, with them) for the Respondents.

G.R. *Petition dismissed.*

[SUPREME COURT.]

P. B. Gajendragadkar, K. Subba Rao and J.C. Shah, JJ.
13th November, 1959.

Nachiappa Chettiar *v.* Subramaniam Chettiar.
C.A. Nos. 112-116 of 1955.

Arbitration Act (*X of* 1940), *section* 21—*Appeal pending against preliminary decree—Application for arbitration—If to be made to trial Court or appellate Court.*

Where the parties agree to refer in mortgage and similar suits the dispute between them to arbitration, after the preliminary but not after the final judgment and where the preliminary judgment is pending in an appeal in a higher Court, the question as to which Court the party should apply for arbitration was left to the choice of the parties to apply to either of the Courts and the Court to which the application has not been made would necessarily take notice of it and avoid any conflict.

A. V. Viswanatha Shastri, for the Appellant.

K. Raja Aiyar, for the Respondent.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

B.P. Sinha, C.J., P.B. Gajendragadkar, K. Subba Rao, K.C. Das Gupta and J.C. Shah, JJ.
20th November, 1959.

S. M. Banerji *v.* Sri Krishna Agarwal.
C.A. No. 301 of 1959.

Representation of People Act (*XLIII of* 1951), *sections* 9, 33, 36 *and* 100—*Amendment of petition after limitation.*

The ground raised in the amended petition was not covered by the averments in the first petition before the Tribunal. The Returning Officer had not accepted the nomination paper improperly in the present case as the want of qualification did not appear on the face of the nomination papers. An amendment introducing a new ground could not be allowed after the period of limitation for filing an Election Petition had expired. The proposed amendment to the petition introduced a new ground and the Tribunal had followed the correct principles in rejecting it. The High Court was in error in interfering with the decision of Tribunal on this point after the entire petition was disposed of and its decision must accordingly be set aside. Case remanded to the High Court to be decided according to law, keeping in view the decision of the Court.

N. C. Chatterjee, for the Appellant.

A. V. Viswanatha Shastri, for the Respondent.

G.R. *Appeal remanded.*

[SUPREME COURT].

B.P. Sinha, C.J., P.B. Gajendragadkar, K. Subba Rao, K.C. Das Gupta and J. C. Shah, JJ.
20th November, 1959.

All India S.M.'s and A.S.M.'s Assn. *v.* Genl. Manager, C. Rly.
Petition No. 126 of 1958.

Constitution of India (1950), *Article* 16 (1)—*Scope.*

" The channel of promotion for guards to higher grade Station-masters' posts as published by the General Manager, Central Railway, under a Notification did not violate the fundamental right of the petitioner to equality of appointment. The Road-Side Station-masters and Guards formed two distinct and separate classes between whom there was no scope for predicating equality or inequality of opportunity in matters of promotion."

N. C. Chatterjee, for the Petitioners.

B. Sen, for the Respondent.

G.R. *Petition dismissed.*

Ramaswami, J.
8th August, 1959.

Paramasiva Iyer *v.* Chinnathambi Padayachi.
S.A. No. 1084 of 1956.

Land Tenures—' Kareiyid ' system of Tanjore District—Meaning of.

Under the tenure known as ' Kareiyid ' obtaining in the District of Tanjore in the Madras State the tenants or kudivaramdars are co-sharers of the entire village, each individual tenant cultivating a specified piece of land, corresponding to his share or interest in the whole, for a definite period, decided upon by the community. There is a periodical re-distribution of the lands between the tenants so that each sharer will get a distribution of the land on the basis of productivity of the soil and not on the basis of the extent alone. (Working of Kareiyid system explained: analogy of modern concept of co-operative farming pointed out: Case-law reviewed.)

P. S. Srisailam, for Appellant.

R. Gopalaswami Ayyangar, for Respondent.

R.M. *Appeal allowed.*

Balakrishna Ayyar, J.
7th September, 1959.

Shankerlal *v.* Collector of Central Excise.
W.P. No. 840 of 1958.

Constitution of India, Article 20 (3)—*Scope of—Protection under—Person summoned to appear under Sea Customs Act—If a person accused—If entitled to protection under Article* 20 (3).

Evidence Act (*I of* 1872), *section* 132—*Applicability.*

Sea Customs Act (*VIII of* 1878), *section* 171-*A—Duty of person summoned to appear before the authorities and answer all questions—Nature of proceedings under.*

The scope of protection which a witness enjoys against self-incrimination is not quite the same under Article 20 (3) of the Constitution of India as under the American Constitution. Article 20 (3) is available only in relation to a proceeding in a criminal Court and therefore the field of protection in India is narrower than in the United States of America. A person summoned to appear before the Sea Customs Authorities under section 171-A of the Sea Customs Act, 1878, is not in the position of a person accused and he is bound to appear before such authorities and answer all questions put to him. Section 132 of the Evidence Act would apply only to judicial proceedings in or before any Court. As proceedings before the Sea Customs Officers are not judicial proceedings nor do such officers constitute Courts, the section has no application to such cases.

The position in such proceedings in relation to Article 20 (3) of the Constitution and the Sea Customs Act will be as follows. (1) When the departmental offices conduct proceedings which may terminate in the confiscation of goods or the imposition of penalties which they can themselves impose, without reference to any criminal Court, such officers are not acting as Courts of law and the proceedings before them are not judicial proceedings, except for the limited purposes of sections

193 and 228, Indian Penal Code; (2) To the persons examined in such proceedings section 132 of the Evidence Act would not apply of its own force; (3) But as they are empowered to prosecute persons for contravention of the Sea Customs Act the position of Customs Officers will in certain respects be analogous to that of police officers acting on information relating to a cognizable offence; (4) A person who has been examined by the Customs Officers will not be in the position of an accused till it can be fairly and properly said that he is likely to be proceeded against in a criminal Court; (5) Though the question when a person becomes an accused person would depend on the decision that the departmental officers may take, they cannot, by merely pretending that they have not made up their minds, circumvent the provisions of Article 20 (3); (6) Whether a witness of a suspect has become an accused person in any particular instance is substantially a question of fact.

Per Curiam.—" It is very desirable that the departmental officers, should make it plain to the person concerned at the earliest moment they can do so, whether it is intended to proceed against him in a criminal Court or not. If it is made plain that there is no intention to proceed against him in a criminal Court then no question of invoking the shield of Article 20 (3) could possibly arise, and, the person will be bound to answer all the questions put to him and, those answers can be taken into account only for imposing departmental penalties. But, if it is intended to prosecute the person concerned in a criminal Court he cannot be compelled to answer any question the answer to which is likely to incriminate him. If, nevertheless, he is forced to answer such questions the answer so obtained cannot be used in evidence against him at the trial ".

K. C. Jacob and *S. K. L. Ratan*, for Petitioner.

The Advocate-General (*V. K. Tiruvenkatachari*) and *M. M. Ismail*, for Respondent.

R.M. ——— *Petition dismissed.*

Subrahmanyam, J. Chellaperumal Chetty *v.* Jayarathnam Chettiar.
10th September, 1959. S.A. No. 8 of 1958.

Promissory-note—Chit-fund transaction—Promissory note executed by a subscriber-bidder for future instalments—If enforceable as a negotiable instrument.

In cases where a subscriber to a chit-fund transaction purchases the chit and executes a promissory note in favour of the company for the future instalments payable by him, it is not correct to say that the promissory note is only a security and is unenforceable as such. The true legal position is that the liability of the subscriber to pay the amount in instalments for a specified period is converted into a liability to pay under the promissory note. At this stage the relationship between the chit-fund and the subscriber is only that of a creditor and debtor. The liability to pay the amount is only under the promissory note though there is usually a tacit understanding that the promissory note would be deemed to be discharged if the subscriber pays the future instalments periodically for the entire period agreed upon. There is no bar to the enforcement of the liability under the promissory note as such.

R. Narasimhachari and *N. Varadarajan*, for Appellant.

D. Ramaswami Ayyangar and *C. Krishnamachariar*, for Respondent.

R.M. ——— *Appeal allowed.*

Rajagopala Ayyangar, J. Periaswami Gounder *v.* Erode Municipality.
14th September, 1959. W.P. Nos. 830 and 831 of 1958.

Madras District Muncipalities Act (V of 1925), sections 13-A (a), 22 and 36—Cumulative effect of—Duty of Executive Authority to give effect to every resolution of Council—Scope of.

Under sections 13-A (*a*) and 22 of the Madras District Muncipalities Act it is the duty of the executive authority of a Municipal Council to carry into effect every

resolution of the Council unless the same is modified, cancelled or suspended by the Controlling Authority. Such a power of suspension is vested only in the State Government and the function of the executive authority (Commissioner) is only to draw the attention of the Government to the invalidity of the resolution, if any. The Commissioner cannot refuse to give effect to any resolution, which is a statutory duty cast on him, merely on the ground that in his opinion the resolution is invalid or *ultra vires*. The combined effect of section 13-A and 22 read with section 36 of the Act is that the Commissioner of Municipality is not vested with any power to refuse to carry out the resolution of the Council.

V. S. Subrahmanyam, for Petitioner.

B. V. Viswanatha Ayyar, S. Mohan Kumaramangalam, K. V. Sankaran and *S. Sethuraman*, for Respondents.

R.M. ——— *Petition allowed.*

Rajagopala Ayyangar, J. Associated Cement Co. *v.* Labour Court, Coimbatore.
15th September, 1959. W.P. No. 284 of 1958.

Minimum Wages Act (XI of 1948) and Rules, Rule 23—Scope of—If provides for payment of wages even for weekly holidays.

Rule 23 of the Rules framed under the Minimum Wages Act only provides that unless the conditions laid down therein are satisfied, *viz.*, permission from Central Government being obtained and compensatory holiday being given, no worker in a scheduled employment should be required to work on the first day of the week, *viz.*, Sunday. The rule does not mean that an employer should pay wages even for the weekly holidays, generally Sundays on which the workers were not required or allowed to work.

M. K. Nambiyar, K. P. Adiga and *K. K. Venugopal*, for Petitioner.

The Government Pleader (*K. Veeraswami*) and The Additional Government Pleader (*M. M. Ismail*), for Respondent.

R.M. ——— *Rule absolute.*

Ananthanarayanan, J. Sivaguru *v.* Saroja.
18th September, 1959. A.A.O. No. 327 of 1958.

Hindu Marriage Act (XXV of 1955), *section* 12 (1) (*d*) *and* (2)*—Annulment of marriage on the ground of concealed pregnancy of the spouse at the time of the marriage—Burden of proof.*

The ground on which a petitioner is entitled to seek the annulment of marriage under section 12 (1) (*d*) of the Hindu Marriage Act, 1955, *viz.*, on the ground that the respondent was pregnant at the time of marriage by some person other than the petitioner is based on a species of fraud perpetrated by the spouse which would invalidate the marriage. Hence it is for the petitioner who seeks annulment to establish the fraud and show that all the conditions laid down by section 12 (2) are also satisfied. It is not enough for the petitioner merely to show the existence of pregnancy *per alium* at the time of the marriage. He must also show that he was ignorant of the fact and also satisfy the Court that he did not have marital intercourse with the wife subsequent to the time when he had grounds for reasonably inferring the cause for annulment. No part of the onus lies on or sifts to the respondent in such cases.

Nature of evidenceand their appreciation, value of probabilities, etc., explained.

T. M. Kasturi and *C. Devarajan*, for Appellant.

Md. Asker Ali, for Respondent.

R.M. ——— *Appeal dismissed.*

Balakrishna Ayyar, J. Ramachandra Naidu *v.* State.
1st October, 1959. W.P. No. 236 of 1959.

Constitution of India, Article 311 (2)—*Reasonable opportunity—What amounts to—Scope of investigation by Court—Scope of interference by High Court under Article* 226.

It is is now well established that before holding that the test as to reasonable opportunity in an enquiry against a Government servant under Article 311 (2) of the Constitution of India has been satisfied it should be established that the enquiry has been conducted objectively and dispassionately, that the person proceeded against has been given reasonable opportunity to scrutinise the evidence against him, to cross-examine witnesses who support the charge against him and produce his own evidence. Further the finding should be reasonably related to the evidence, *viz.*, that there should be at least some little evidence on which the conclusion can rest. In addition to all these the charges framed against the person should have a reasonable definiteness about it so as to enable the person charged to rebut it.

V. Vedantachari, for Petitioner.

R. G. Rajan, for the Additional Government Pleader (*M. M. Ismail*) for Respondent.

R.M. ——— *Rule absolute.*

Rajagopalan and Ramachandra Iyer, JJ. Sreenivas & Co. *v.*
16th October, 1959. D.C.T.O. Moore Market Division.
W.A. No. 15 of 1958.

Madras General Sales-tax Act (*IX of* 1939)—*Turnover and Assessment Rules* (1955), *Rules* 15 *and* 16—*Taxing of sales in hides and skins—Validity—If repugnant to Article* 286 (3) *of the Constitution.*

Constitution of India, Article 286 (3)—*Law imposing a tax—Meaning of—If includes subordinate legislation.*

A taxing enactment generally contains provisions regarding levy, assessment and recovery of the tax. Under the scheme of levy of sales-tax there is also a provision by which the transaction or transactions which attract tax liability is specified, *viz.*, whether the tax is at a single point or multipoint. Thus Rule 16 of the Turnover and Assessment Rules framed under the Madras General Sales-tax Act, is an important element in the tax liability and should, therefore be considered as an integral part of the charging provisions. It would, therefore, be part of the law imposing a tax. But that does not mean that the rule is invalid for want of assent of the President under Article 286 (3) of the Constitution.

(Scheme of Act and Rules explained).

It is no doubt true that the expression 'law imposing a tax' in Article 286 (3) of the Constitution of India cannot be given a limited meaning as under the Australian Constitution and the decisions of the Australian Courts as to the interpretation of the words cannot be of guidance in the interpretation of those words in Article 286 (3) of the Constitution of India.

But the restriction imposed by Article 286 (3) of the Constitution is only with respect to the law imposing sales-tax by the legislation of a State. It does not apply to subordinate legislation like Rules 15 and 16 of the Turnover and Assessment Rules under the Madras General Sales-tax Act. Hence those Rules, though they may amount to a charging provision, cannot by themselves be held to be a law of the State Legislature imposing a tax. As the original Act was passed long prior to the Constitution and did not require the President's assent under Article 286 (3) of the Constitution any subordinate or delegated legislation which should be deemed to be part of the original Act, should not require such assent.

(Difference between pre-Constitution and post-Constitution Acts levying sales tax pointed out).

Rules 15 and 16 of the Turnover and Assessment Rules, 1955, being only subordinate legislation though imposing a tax in regard to an essential commodity governed by Act LII of 1952 could not be said to be a law passed by the State Legislature imposing a tax after the Constitution came into force and therefore there was no necessity to reserve it for consideration and assent of the President for their validity.

Messrs. Sundararajan and Sivaswami, for Appellant.

The Advocate-General (*V. K. Tiruvenkatachari*) and The Additional Government Pleader (*M. M. Ismail*) for Respondent.

R.M. — *Appeal dismissed.*

Rajagopalan and Ramachandra Iyer, JJ.
26*th October,* 1959.

C. I. T., Madras *v.*
Sri Rama Vilas Service.
T.C. No. 68 of 1958.

Income-tax Act (XI of 1922), *sections* 10 (5), 10 (2) (*vi*) (*a*) *and* (*b*)—'*Machinery installed'—If would include lorries and buses—Right to development rebate in respect of such vehicles.*

The word 'installed' in relation to any machinery or plant must be construed to mean such installation as that plant or machinery is capable of. A bus or lorry purchased by an assessee and put on road in the course of the business which he carried on, will certainly satisfy the test of installation of such vehicles, whch are also 'plant' within the meaning of section 10 (5) of the Income-tax Act. The expression 'plant or machinery installed' should be given the same meaning in both sub-clauses (*a*) and (*b*) of section 10 (2) (*vi*) of the Act. The word 'installed' has to be given its normal meaning and does not necessarily connote something fixed to the earth or immoveable. Hence an assessee will be entitled to claim development rebate in respect of such vehicles.

(1959) 36 I.T.R. 580, followed.

C. S. Rama Rao Sahib, for Applicant.

V. Sethuraman, for Respondent.

R.M. — *Answer accordingly in favour of assessee.*

Ramachandra Iyer, J.
20*th November,* 1959.

Viswanatha Pillai *v.*
Indian Overseas Bank, Ltd.
C.M.P. No. 6043 of 1959.

Practice—Stay of execution of decree pending an appeal against order refusing to set aside ex parte *decree—Powers of appellate Court.*

Civil Procedure Code, Order 43, *rule* (1) (d)—*Refusal to set aside* ex parte *decree—Appeal from—Power of appellate Court to stay execution of decree.*

In an appeal against an order refusing to set aside an *ex parte* decree it is open to the appellate Court to stay the execution of the *ex parte* decree itself, even though no appeal is filed against the said decree.

I.L.R. 58 Mad. 116, referred.

31 Cal. 1081 : 35 I.C. 443 and A.I.R. (1942) Pat. 146, differed.

C. S. Rajappa, for Petitioner.

C. C. Thambi, for Respondent.

R.M. *Stay granted.*

[END OF VOLUME (1959) 2 M.L.J. (N.R.C.)].